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MICHAEL RODAK,

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-797

THE MIAMI HERALD PUBLISHING COMPANY,
a division of
KNIGHT NEWSPAPERS, INC.,
Appellant,

v.

PAT L. TORNILLO, JR.,
Appellee.

On Appeal from the Supreme Court of Florida

BRIEF FOR APPELLEE PAT L. TORNILLO, JR.

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PAT L. TORNILLO, JR.,

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On Appeal from the Supreme Court of Florida

BRIEF FOR APPELLEE
PAT L. TORNILLO, JR.

QUESTION PRESENTED

Does not Section 104.38, Florida Statutes, implement freedom of speech, press and due process of law guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, by compelling a newspaper to provide free space to a candidate in a state election to reply to an editorial in the newspaper which "assails (his) personal character", or charges him with "malfeasance or misfeasance" in office, or "otherwise attacks his official record"?

ARGUMENT

Introduction and Summary

The fundamental issue in this case is whether the Florida right of reply statute (F.S. §104.38) is consistent with the First Amendment. The simplicity of the issue before this Court must be emphasized since considerable effort has been expended by appellant, and allied *amici*, to intrude the distraction into this proceeding of various issues which are in no sense present. An example of such straw man distractions is the dogged effort by appellant to confuse the issues in this case with the issue of whether the First Amendment, of its own force, imposes any duty to provide access to the public by private newspapers. Still another issue much talked about in the briefs, but not even remotely related to the issues in this proceeding, is whether broadcasting's fairness doctrine should be applied to the press.

Appellee supports its view that §104.38 is constitutional on the following grounds. First, appellee contends that the Florida right of reply statute is not a restraint on freedom of expression, but in fact encourages and implements freedom of expression. The key point about the statute in this regard, as was stressed by the decision below, is that no newspaper "content is excluded", but, rather, the statute is "designed to add to the flow of information and ideas." App. p. 22.

Second, the statute is validated by its complete consistency with the major premise of *New York Times v. Sullivan*, 376 U.S. 254 (1964): The First Amendment should be interpreted to encourage "open and robust debate on public issues". The statute is clearly validated by this Court's counsel to the states in *Rosenbloom v. Metromedia*, 403 U.S. 29 at 47, footnote 15 (1971), that if the states are concerned that citizens do not have appropriate legal resources "to respond adequately to publicity involving them, the solution lies in the direction of ensuring their ability to respond, rather than in stifling public discussion of matters of public concern."

Third, the Florida right of reply statute is constitutionally authorized as a permissible regulation of freedom of the press, because of the overriding police power interest in assuring fair and honest elections. Indeed, compared with other state legislation affecting the press, this statute presents much less in the way of constitutional obstacles, since this statute in no sense restricts content. See, e.g., Appendix to this Brief.

Fourth, the Florida right of reply statute, F.S. §104.38, is neither impermissibly vague nor unnecessarily

broad. This proceeding is a non-criminal proceeding. The statute has received a narrowing construction from the state Supreme Court. Finally, any chilling effect will result from the refusal to validate the statute, rather than the contrary.

Fifth, F.S. §104.38 is not fairly subject to charges of accomplishing an invalid taking of appellant's property. The incidental use of private property by §104.38 for the exercise of First Amendment rights does not deprive appellant of property without due process of law. The exercise of First Amendment rights on either public or private property has never called for payment in the prior decisions of this Court. Furthermore, any taking that has been accomplished by the facts of this case has been accomplished by appellant's destruction of appellee's reputation, and by its frustration of appellee's rights to exercise precious First Amendment and political rights.

Sixth, although finality problems in a technical sense have been created by appellant's refusal to concede that it will publish appellee's replies if this Court upholds F.S. §104.38, the chilling effect on Tornillo and other candidates for office that will result from failure to resolve the issue, justifies resolution by this Court of the constitutionality *vel non* of F.S. §104.38.

For the foregoing reasons, Appellee contends that this Court should uphold §104.38 as entirely consistent with the First Amendment.

I.

THE FLORIDA RIGHT OF REPLY STATUTE IS NOT A RESTRAINT ON THE FIRST AMENDMENT BUT ENCOURAGES AND IMPLEMENTS FREEDOM OF EXPRESSION.

A fundamental aspect of this case which the Supreme Court of Florida quite properly underscored is that the statute in question here has not prevented the *Miami Herald* from saying anything it wished. No administrative agency, no court, has prevented the appellant from expressing itself. The Florida right of reply statute is not ideologically partisan. There is no single idea the expression of which is proscribed by the Florida statute. On the contrary, the expression of ideas is encouraged and furthered by this legislation. *The dispositive constitutional implications for validity of a statute which demands debate in certain limited circumstances and a statute which inhibits or circumscribes expression can not be over-emphasized.* Indeed, the Supreme Court of Florida in the decision below emphasized this precise point:

> "The statute here under consideration is designed to add to the flow of information and ideas and does not constitute an incursion upon First Amendment rights or a prior restraint, since no specified newspaper *content is excluded.* There is nothing prohibited but rather it requires, in the interest of full and fair discussion, additional information." App. p. 22.

There is nothing novel in the concern expressed by the decision below for "full and fair discussion." Similarly,

affirmative legislation designed to assure the free flow of information to the electorate is hardly a concept which is foreign to our First Amendment case law.

Censorship is the epithet applied by appellant, and its allied *amici*, to the Florida right of reply statute. To label as censorship Tornillo's effort to enforce Florida's right of reply statute, F.S. §104.38, is a triumph for the Orwellian use of language. The paradox of this case is that the only censorship that has occurred in the case before this Court is attributable to the appellant. Appellant editorially attacked Tornillo. Tornillo sought the reply provided by state law and appellant then refused to allow him to voice that reply. And yet the astonishing theme running through the briefs of the appellant, and the host of *amici* from the media industry who have joined them, is that Tornillo's censors should themselves be regarded as the defenders of freedom of expression.

There is a special irony in appellant's insistence that existing imbalances and inequalities in the communications process can be cured by enforcement of the antitrust laws rather than legislation such as §104.38 which specifically provides for a limited right of reply. Appellant has itself received special immunity from the antitrust laws enacted pursuant to the Newspaper Preservation Act, 15 U.S.C. §1801, by Congress in 1970.

The *Miami Herald*, the appellant in this case, along with newspapers in 22 cities, is one of the beneficiaries to this special immunity. Appellant's argument is worthy of characterization by author Joseph Heller, who in his novel *Catch 22* so memorably portrayed the impenetrable labyrinths spun by modern military and bureaucratic

techniques. Thus, appellant tells us soothingly that right of reply legislation is unnecessary to deal with problems of concentration of ownership in the media since that is the task of the antitrust laws. The only difficulty with this proffered solace is that appellant discreetly fails to mention that it has secured immunity from the antitrust laws.

Appellant takes umbrage at the concern expressed by the decision below about the effects of concentration of ownership in the media on the free flow of information in this country. On this point, the decision below states:

> "The right of the public to know all sides of a controversy and from such information to be able to make an enlightened choice is being jeopardized by the growing concentration of the ownership of the mass media into fewer and fewer hands, resulting ultimately in a form of private censorship." App. p. 22.

Appellant's response to this concern is to say that the "antitrust laws are adequate to deal with such problem, if they are found to exist in fact." Appellant's Brief, p. 27. In the light of the Newspaper Preservation Act, this response is less than persuasive.

Paradoxically, the grant of an exception by the Newspaper Preservation Act to the affected newspapers from antitrust law enforcement was justified on the ground that insofar as possible the existence of two daily newspapers in a community should be encouraged. If the only way that goal can be secured is by legislation specifically condoning behavior which would otherwise violate the antitrust laws, then according to this reasoning, such legisla-

tion is justified. This was the rationale behind permitting newspapers in 22 cities, including the City of Miami and the *Miami Herald*, to enter into joint operating agreements and to set joint advertising subscription rates which would otherwise violate the antitrust laws.

The Newspaper Preservation Act permits joint operating agreements between "competing" dailies in the same city in order to give the newspaper readership in those cities the continuing benefit which is believed to result from having access to *two* editorial pages and *two* daily newspapers in the same community.

If legislation like the Newspaper Preservation Act, designed to assure diversity of opinion is constitutionally permissible, it is difficult to perceive why legislation like the Florida right of reply statute, §104.38, is also not constitutionally permissible. See Barron, FREEDOM OF THE PRESS FOR WHOM? pp. 18-19 (Indiana University Press, 1973).

The governmental largesse received by the *Miami Herald* under the Newspaper Preservation Act was pointed out in the Appellee's Response to Appellant's Jurisdictional Statement in order to show the inconsistency of appellant's position, which alternately favors and disfavors legislation designed to secure diversity of opinion. (See Appellee's Response, p. 18.) Appellant has not provided any explanation for its inconsistent position in its brief on the merits.

"In it (the Newspaper Preservation Act) Congress specifically exempted joint operating agreements among newspapers from the anti-trust laws. The Act made it possible for two news-

> papers in a community to share facilities and to establish joint advertising rates. This made it even harder financially for any new entrant to enter a new community where such an agreement was in force. *Should this kind of extraordinary governmental aid impose new responsibilities? If government can legislate to benefit the press, can it not also legislate to benefit the readership?"* See Barron, FREEDOM OF THE PRESS FOR WHOM? p. 18 (Indiana University Press, 1973). (emphasis added.)

There can be no doubt that legislation designed to protect freedom of expression is constitutional. The fairness doctrine in broadcasting, the application of the antitrust laws to the press, to give but two famous examples, were both constitutionally upheld on this basis. *Associated Press v. United States*, 326 U.S. 1 (1945); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). The legislation in question in each case was upheld on the ground that the regulation in each instance implemented First Amendment objectives. In order to refute the extravagant arguments made by appellant and its media allies for immunity of the press from all legal, indeed all social obligation, it is hard to improve upon the words of Mr. Justice Black, speaking for this Court, in *Associated Press v. United States, supra* at 20.

> "Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests."

Appellant puts particular stress on an excerpt from Mr. Justice Douglas' concurring opinion in *Columbia Broadcasting System, Inc. v. Democratic Nat'l Comm.*,

36 L.Ed.2d 772, 811 (1973) quoting Professor Emerson to the following effect:

> Thomas I. Emerson, our leading First Amendment scholar has stated that " * * * any effort to solve the broader problems of a monopoly press by forcing newspapers to cover all 'newsworthy' events and print all viewpoints, under the watchful eyes of petty public officials, is likely to undermine such independence as the press now shows without achieving any real diversity." *The System of Freedom of Expression* (1970), p. 671.

This passage is quoted by appellant as dispositive of the contention that concentration of the media can be cured by government regulation of the content of the press. Reliance on this passage creates a misconception that Professor Emerson has expressed himself against right of reply legislation; the contrary is the case.

Professor Emerson in the passage quoted above is speaking against any attempt to create "an administrative tribunal" to enforce a "fairness doctrine" for the press. See Emerson, *The System of Freedom of Expression* (1970), p. 670. But Professor Emerson makes it expressly clear in the very sentence preceding the passage quoted above that "[*a*] *limited right of access to the press can be safely enforced.*" Emerson, *supra* at p. 671. Moreover, Professor Emerson with his customary precision is very careful to show that he includes within a "limited right of access" a right of "reply to libel and to personal attack." Emerson, *supra*, at p. 671. It should be noted that, contrary

to appellant's effort to limit right of reply exclusively to a libel context, Professor Emerson concludes that legislation enforcing a right of reply "through the usual forms of the judicial process" could constitutionally reach right of reply to "libel" and, as in this case, to "personal attack."

Not only has Professor Emerson expressed sympathy for a right of reply to the press, he has expressly stated that right of reply legislation is consistent with freedom of expression:

> *There are other devices for protecting the individual that are not only consistent with a system of freedom of expression but that would strengthen and vitalize it. The most significant is a right of reply.* * * * It (a right of reply) is particularly applicable in the case of the press where abandonment of the libel action would be felt the most. *Such a procedure is the most appropriate and probably the most effective way to deal with the problem. The person attacked would have an opportunity to get his position and his evidence quickly before the public. He would have a forum in which to continue the dialogue, rather than being forced to withdraw to the artificial arena of the courtroom. The discussion would thus be kept in the marketplace,* and the issues left up to the public, which must make the final decision anyway." Emerson, *supra*, pp. 538-539 (Emphasis supplied.)

Tornillo in this proceeding seeks to use the Florida right of reply statute for exactly the purposes for which

Professor Emerson commends the establishment of a right of reply: He seeks to avail himself of the "opportunity" a right of reply presents to the "person attacked" to bring his position before the public. Unfortunately, appellant here has chosen to deny Tornillo that opportunity and has chosen to confine "discussion" to the courtroom rather than where Tornillo wanted it—"in the marketplace."

A significant fact about the prior legal literature and case law involving right of reply legislation is that all such authoritative discussions have simply assumed the constitutionality of right of reply legislation. Thus, when a question of the construction of the Mississippi right of reply statute, Mississippi Code of 1942, § 3175, came before the Mississippi Supreme Court, the case was not viewed as raising any issues of First Amendment invalidity. See *Manasco v. Walley*, 63 So.2d 91 (Miss. 1953). A reading of the *Manasco* case makes it evident that the state supreme court considered the state right of reply statute entirely constitutional.

Professor Donnelly in his pioneering discussion of right of reply legislation expressed great sympathy for a right of reply on exactly the ground for which Tornillo seeks to enforce the right of reply granted him by Florida law:

> "Manifestly the right of reply makes accessible the means of communication that would otherwise be denied to a person named or designated in the press. The public issues and problems of our time are usually discussed in the terms of the personalities involved. Replies by these persons would provide the community with the divergent views necessary for sound decision-making."

See Donnelly, *The Right of Reply: An Alternative To An Action For Libel*, 34 Va. L. Rev. 867 at 898 (1948).

Other distinguished spokesmen on First Amendment matters have also advocated right of reply legislation on the ground that it would implement, rather than transgress, the First Amendment. See Chafee, GOVERNMENT AND MASS COMMUNICATIONS 183 (1947); The Commission on Freedom of the Press, A FREE AND RESPONSIBLE PRESS pp. 82-106 (1947).

Despite the fact that prior to this case there had been little doubt among those who had addressed themselves to the issue that right of reply legislation was constitutional, a good portion of appellant's brief is devoted to the proposition that "compulsion to print is in direct contradiction to freedom of the press" and that a great wealth of precedent so states. See Appellant's Brief, p. 10. Appellant says that the "theory adopted by the Florida Supreme Court that the First Amendment permits governmental regulation to compel a newspaper to publish against its will has been uniformly rejected by all other courts which have considered the issue * * *." See Appellant's Brief, p. 15. This is entirely incorrect. Not a single case cited by appellant concerns the validity under the First Amendment of a state right to reply statute. The following observation is far more accurate: "While there is no precedent for *Tornillo*, there is also very little authority opposed to it." See Lange, *The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment*, 52 N. Carolina L. Rev. 1 at 67 (1973).

The *Tornillo* case has nothing to do with that series of cases, which both in the briefs on jurisdiction, and now

in the briefs on the merits, the appellant, and their allied *amici*, never tire of citing: cases where the courts have declined to judicially fashion through interpretation of the First Amendment a right of access to the privately owned press. *Chicago Joint Bd., Amalgamated Clothing Workers v. Chicago Tribune Co.*, 435 F.2d 470 (7th Cir. 1970), cert. den., 402 U.S. 973 (1971), is the paradigm case of this type.

Chicago Joint Board did not involve a statutorily conferred right of reply, but instead, it concerned an effort to establish a First Amendment based duty to publish editorial advertisements. Even more significantly, the federal district court in *Chicago Joint Board Amalgamated Clothing Workers v. Chicago Tribune Co.*, 307 F.Supp. 422 (N.D. Ill. 1969), implied that it might have reached a different result if the legislature were to have passed a right of access statute: "If, in fact, concentrations of private media power are stultifying, the appropriate approach to secure a right of access would be by 'experimental, innovative legislation' or Constitutional Amendments." *Id.* at 429.

In *Chicago Joint Bd. Amalgamated Clothing Workers v. Chicago Tribune Co.*, 435 F.2d 470, 473 (7th Cir. 1970), the plaintiff union based jurisdiction on 28 U.S.C. §§1331 and 1343(3): "because the factual allegations (of the complaint) require a conclusion that the defendants' rejections of its editorial advertisement involved state action." The entire opinion of the Court of Appeals in *Chicago Joint Board* was devoted to the conclusion that refusal to take the ads was *not* state action. In other words, the case failed for lack of jurisdiction. The case is thus completely without any substantive First Amendment significance for the resolution of the issues presented by this case.

Reliance ~~by~~ appellant on *Associates & Aldrich Co. v. Times Mirror Co.*, 440 F.2d 133 (9th Cir. 1971) is similarly misplaced. There, advertising was rejected on a theory which predicated a duty to publish the advertising in question on a duty derived from the First Amendment itself. Private newspapers were held to have no First Amendment obligations. The case was, therefore, decided on exactly the same lack of jurisdiction state action point on which *Chicago Joint Board* was determined. Unlike this case, no statute in *Associates & Aldrich Co.* conferred any rights of publication. Statements made in such cases to the effect that publishers enjoy absolute property rights, and that the meaning of freedom of the press is completely limited to those owning media outlets, are clearly *dicta*.[1]

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[1]A recent indication that judicial reaction to the contention that newspapers are exclusively private and are always to be considered without public interest obligation is not shared by all the federal courts of appeal is found in *Herald Co. v. Seawell*, 472 F.2d 1081 (10th Cir. 1972). In that case, in the context of a shareholder's derivative suit, which sought to force the sale of a locally owned newspaper to a chain newspaper, the United States Court of Appeals made the following observation:

> "Basic in many of the rules of law pertaining to the relationship between officers and directors of a corporation and the corporate stockholders is the motive of profit for the corporation. *A corporation publishing a newspaper such as the Denver Post certainly has other obligations besides the making of profit. It has an obligation to the public, that is, the thousands of people who buy the paper, read it, and rely upon its contents. Such a newspaper is endowed with an important public interest.* It must adhere to the ethics of the great profession of journalism. The readers are entitled to a high quality of accurate news coverage of local, state, national, and international events. The newspaper management has an obligation to assume leadership, when needed, for the betterment of the area served by the newspaper. *Because of these relations with the public, a corporation publishing a great newspaper such as the Denver Post is, in effect, a quasi-public institution.*" *Id.* at 1094-1095 (Emphasis supplied).

Another case on which appellant relies, *Avins v. Rutgers*, 385 F.2d 151 (3rd Cir. 1967) did have state action present since Avins sought publication in a state university law review, but otherwise the case is clearly inapplicable. The *Avins* case was not a right of reply case nor even an access case; Avins conceded that he would publish the article in question in some law review:

> "He (Avins) says that he has published articles in other law reviews and will sooner or later be able to publish in a law review the article here involved." 385 F.2d 151 at 153.

The appellee, Tornillo, is in quite a different position than the plaintiff was in *Avins*. His need for a response to an editorial attack in the forum which attacked him, rooted as it is in a need to satisfy the electorate's need for debate on public issues, raises a claim of far higher First Amendment dimension. Tornillo seeks to respond to an attack. Reply, not access, is what Tornillo seeks. Moreover, Tornillo does not ask for the acceptance of a new theory of First Amendment protection in order to give him that reply but rather he seeks the enforcement of a statute which has been part of the Florida Electoral Code since 1913.

There is still another reason why *Avins* is without force in this case. *Avins* is the one case where the claimant for a First Amendment-based duty of publication lost, when state action was present. A number of recent cases have recognized a duty on the part of state supported institutions and state supported school and college newspapers to publish editorial advertisements on a non-discriminatory basis. See *Lee v. Board of Regents*, 306 F. Supp. 1097

(W.D. 1969); *aff'd* 441 F.2d 1257 (7th Cir. 1971), *Zucker v. Panitz*, 299 F.Supp. 102 (S.D.N.Y. 1969); *Kissinger v. New York City Transit Authority*, 274 F. Supp. 438 (S.D.N.Y. 1967); and *Wirta v. Alameda-Contra Costa Transit Dist.*, 68 Cal.2d 51, 434 P.2d 982, 64 Cal. Rptr. 430 (1967).

In *Lee v. Board of Regents, supra*, the United States Court of Appeals for the Seventh Circuit held that state college newspapers could not reject advertisements protecting racial discrimination or the Vietnam War, as they had wished to do, in light of the fact that the paper was open to commercial and other types of ads. The contrast between *Chicago Joint Board* and *Lee v. Board of Regents* has been described as follows:

> "The fortuitous fact that a school newspaper is published with public funds gives a school community larger rights than can now be claimed by the readership of a daily newspaper, despite the community's dependence on the latter and despite the governmentally conferred advantages such as mailing rates. A simplistic dichotomy between private and public is seriously affecting the exercise of First Amendment rights. The serious and ludicrous results of this distinction can be appreciated when it is realized that what a labor union was unable to gain from four Chicago newspapers — recognition of a duty to publish — was in fact obtained by a small group of school children from a high school newspaper." See Barron, FREEDOM OF THE PRESS FOR WHOM? 36 (Indiana University 1973).

In this case, there is no state action problem; Florida, acting to secure a legitimate police power interest, the purity of the electoral process, has statutorily imposed a limited right of reply on candidates attacked by newspapers during a political campaign. Neither the *Chicago Joint Board* line of cases nor the *Lee v. Board of Regents* line of cases is directly applicable to the resolution of the issues raised by this case. But the doctrine of *Lee v. Board of Regents, supra,* and its kindred cases, cited above, does suggest that the alleged administrative and "chilling" difficulties in judicially enforcing a limited right of reply statute, such as the one here, may be greatly exaggerated. If rights of publication can be conferred on the publicly supported press as a matter of constitutional duty, the case for upholding a carefully construed right of reply statute should be even more compelling.

Ignoring its own admonition about incautiously applying precedents from the field of broadcast regulation to the quite distinct problems raised by this case,[2] appellant nevertheless, places great reliance on this Court's decision in *Columbia Broadcasting System, Inc. v. Democratic Nat'l Comm.*, 36 L.Ed.2d 772 (1973).

The *CBS* case held that the force of the First Amendment did not require the broadcast networks to abandon

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[2]See appellant's discussion of *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969) in its brief, pp. 20-24. Appellant here warns against assuming that the "fairness doctrine" applies to newspapers. Appellee has never made any such contention. It is appellant who keeps trying to intrude the "fairness" doctrine into this case and it is the appellee which has the task of reminding appellant, and the *amici*, who have joined them that the only issue before this Court is the constitutionality *vel non*, of the Florida right of reply statute. F.S. §104.38.

their policy of refusing to sell time to political groups and parties for the dissemination of views about ideas. Whatever *dicta* in *CBS* appellant chooses to take comfort in, the plain fact is that the *CBS* decision like all the other "precedents" appellant cites is a state action case. This Court held in *CBS* that so long as neither Congress nor the FCC did not forbid or require the networks to adopt any specific policy with regard to the sale of broadcast time for the dissemination of ideas, network policy on that subject was private action and, therefore, removed from the realm of constitutional obligation.

It would be completely erroneous to read the *CBS* case as saying that government may never legislate to encourage free debate. Chief Justice Burger did state that, assuming *arguendo* the presence of state action, it was not necessary to interpret the First Amendment or the "public interest" language in the Federal Communications Act to create a limited right of access to buy editorial advertising. Creation of such a right was unnecessary, this Court said, because of the existence of the fairness doctrine. The significance of this reasoning lies in the fact that Chief Justice Burger, speaking for this Court, resoundingly reaffirmed the fairness doctrine, and in defining it, gave it a vigorous and affirmative thrust. There is nothing in the *CBS* case to support the view that government may not legislate to further free debate. Furthermore, Chief Justice Burger for the Court specifically reserved decision on whether an FCC prohibition on a blanket refusal to take editorial advertising in broadcasting would be constitutional:

> "We do not reach the question whether the First Amendment or the Act can be read to preclude the Commission from determining that in some situations the public interest requires licensees to re-examine their policies with respect to editorial advertisements. The Commission has not yet made such a determination; it has, for the present at least, found the policy to be within the sphere of journalistic discretion which Congress has left with the licensee." *Id.* at 793.

Chief Justice Burger also carefully pointed out that the Court did not decide whether an act of Congress forbidding broadcasters from refusing, as a general policy, to sell time to responsible entities for solicitation of funds and for comment on public issues would be constitutional. The decisive point in *CBS* was that neither Congress nor the FCC had promulgated such a policy. Chief Justice Burger, noting that Congress had rejected some access to broadcasting proposals in the past, still made it clear that the path of Congressional choice was clearly left open:

> "That is not to say that Congress' rejection of such proposals must be taken to mean that Congress is opposed to private rights of access under all circumstances. Rather, the point is that Congress has chosen to leave such questions with the Commission, to which it has given the flexibility to experiment with new ideas as changing conditions require." *Id.* at 795.

All *CBS* can fairly be interpreted to hold is that the electronic media do not, as a First Amendment matter, have a duty to refrain from refusing to sell broadcast time

for ideas. State action was the touchstone of decision in *CBS* as it was in *Chicago Joint Board*. But the constitutional question is entirely different when government by *legislation* creates rights and duties to further free debate. *Cf. Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). In the *Tornillo* case, unlike *CBS*, the validity of the enforcement of a statutory right of reply, whose parameters are clearly visible, is what is in issue. Such a case is therefore devoid of the problems of demarcating boundaries and formulating definitions that are thought to be associated with a case dependent on the development of new constitutional rights by means of judicial interpretation.

In conclusion, there is no shadow on the constitutional status of right of reply *legislation*. There is no body of case law opposed to the constitutional validation of such *legislation*. The truth is, as Professor Emerson has so correctly said, that a right of reply is designed to keep discussion in the "marketplace" where it belongs. See Emerson. The System of Freedom of Expression (1970), pp. 538-539. Specifically, the Florida right of reply statute, §104.38, keeps discussion in the marketplace and furthers that full, fair and free discussion on public issues which it is the central purpose of the First Amendment to protect. See *New York Times v. Sullivan*, 376 U.S. 254 at 270 (1960).

II.

THE FLORIDA RIGHT OF REPLY STATUTE IS ENTIRELY CONSISTENT WITH THE MAJOR PREMISE OF *NEW YORK TIMES V. SULLIVAN:* THE FIRST AMENDMENT SHOULD BE INTERPRETED TO ENCOURAGE "(D)EBATE ON PUBLIC ISSUES"

Florida's right of reply statute is a modest and limited statutory effort to ensure that the electorate is granted the advantage of receiving not only a vigorously expressed attack on a particular political candidate by the local newspaper press but the candidate's response to this attack as well. That a citizen's attempt to use the protections provided by F.S. § 104.38 should have occasioned the frenzied response that it has from the press presents a sad spectacle. The powerful and prestigious media who are the *amici* in this case have benefited greatly from this Court's landmark ruling in *New York Times v. Sullivan*, 376 U.S. 254 (1964), which has conferred on the press an immunity from libel previously unknown in American legal history. Yet appellant, and the media *amici* in this case, have forgotten the major premise of the *New York Times v. Sullivan* case: an attachment to, and insistence on, "debate on public issues."

The significance of the Florida right of reply statute to the encouragement of "debate on public issues" is something, unfortunately, that is not appreciated by the appellant or its media allies. The appellant throughout its brief on the merits refers to the statute as a compulsory publication statute rather than a right of reply statute. It is regrettable in view of the emphasis on debate in *New York*

Times v. Sullivan and kindred cases that appellant should prefer to call a statute which provides a reply by such a pejorative name. A compulsory publication statute might be an appropriate name for a statute which would require a paper to take editorial positions on matters that were contrary to its conscience and beliefs. But the truth is that the *Miami Herald* can still continue to treat Tornillo in the manner of the Soviet Encyclopedia as a non-person. The Florida statute does not require the *Herald* to take editorial positions in Tornillo's favor. All that the statute requires is that if the *Herald* attacks the "personal character" of Tornillo when he runs for office, the *Herald* must allow the voters to hear his side of the debate. It is ironic that so elementary a demand of civilized discourse should provoke a protest that freedom of press and speech are being violated when the fact of the matter is that freedom of expression is being violated not by Tornillo, but by the newspaper which has brought this appeal.

The Florida right of reply statute not only does not abridge content in any way but it promotes public debate. This Court based its decision in *New York Times v. Sullivan*, on the fundamental First Amendment principle that "debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." 376 U.S. 254 at 270. One cannot help but be struck at how apposite this entire quotation is to this litigation.

"Attack" which is both "caustic" and "unpleasant" is present here. Tornillo was called by the appellant, among other names, a "czar", and a practitioner of "shakedown statesmanship." The appellant, free from the restraints

of the pre-*New York Times* law of libel, has indeed expressed itself in a fashion which is "vehement" and "robust", and this, from a First Amendment point of view, is as it should be. So much at least of the premise of *New York Times, supra*, has been fulfilled. The person who has not expressed himself is the victim of the editorial attack. It is this interest which has been recognized by the Florida right of reply statute. The realization of this interest is responsive to the *raison d'etre* of the *New York Times* doctrine: "the profound national commitment" to a principle of "debate on public issues." This case illustrates attack aplenty. But, unfortunately, the facts of the case also illustrate the silencing of debate. It is the First Amendment interest in debate which appellant and its allied *amici* are unwilling to recognize.

The Court in *New York Times* said of its extension of new protection to the press "for criticism of official conduct" that it was "appropriately analogous to the protection accorded a public official when *he* is sued for libel by a private citizen." 376 U.S. 254 at 282. Since federal officials had an absolute immunity for their utterances even for those utterances which extend to the uttermost limit of their duties, *Barr v. Matteo*, 360 U.S. 564 (1959), and since the states have similarly extended at least a qualified privilege to their officials, it was only basic fairness to authorize a similar privilege for the "citizen-critic of government." 376 U.S. 254 at 282. When this Court in *New York Times* established a new immunity doctrine for what has been called the public law of libel, this new protection was not given exclusively to the press but to "citizen critics" like Pat Tornillo.

From the point of view of the propriety of the validity of the right of reply legislation here at issue, it should be remembered that although it pleases some of the *amici* to view Tornillo as part of government, it should be remembered that he was not an incumbent, that he was running for office and that the expressed reason for the *Herald's* hostility to him was founded precisely in his role as a "citizen critic of government." In fact, as outspoken advocate of a public school teacher's strike in defiance of the Governor of the State of Florida, Claude Kirk, Tornillo had served a valuable role as a "citizen critic" of government.

The objective of the doctrine of *New York Times* is to encourage participation in public issues and criticism of public institutions by citizen critics whether the "critic" is or is not a journalist. The Court concluded in *New York Times* that since as a general proposition government officials could speak freely within the range of their duties without fear of liability for defamation, citizen critics of government, such as the private press and individuals like Tornillo, should have the same opportunity.

The entire fabric of the *New York Times* doctrine was built on the premise that since officialdom can freely speak with no fear of libel, citizen critics, including members of the free press, should also have the same right. What apparently was not anticipated was that a newspaper given new freedom to participate in debate on public issues would deny it to others in circumstances such as these.

In *New York Times*, the defendant had argued that the constitutional guarantees of freedom of speech and

press were inapplicable because the allegedly "libelous" statements were part of a paid "commercial advertisement" and were thus commercial speech meriting a lower degree of constitutional protection. The Court rejected this argument:

> "The publication here was not a 'commercial' advertisement in the sense in which the word was used in Chrestensen. It communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern." 376 U.S. 254 at 266.

The two replies submitted by Tornillo fulfill each of the informing functions of the editorial advertisement protected by this Court in *New York Times*. The Court offered the following rationale for refusing to view the advertisement there in question as a "commercial" advertisement:

> "Any other conclusion would discourage newspapers from carrying 'editorial' advertisements of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press." 376 U.S. 254 at 266.

This Court should similarly reject appellant's censorship and content restriction arguments for refusing to publish the replies submitted by Tornillo pursuant to the

Florida right of reply law. The reply here at issue provides exactly the kind of "outlet" to persons "who are not members of the press" as did the editorial advertisement *Heed Their Rising Voices* in *New York Times*.

In *New York Times*, the judiciary, a branch of government acted affirmatively, through the process of First Amendment interpretation, to create a doctrine to remove the restraint on expression provided by harsh libel law judgments. In F.S. § 104.38, Florida has acted to remove yet another restraint on expression: the refusal by a paper to provide a right of reply to a political candidate during a campaign. Affirmative legislative action such as the Florida right of reply statute is no less constitutional than the doctrine of *New York Times*. Both the statute and the doctrine are designed to further free expression and debate.

New York Times v. Sullivan, *supra*, made the focal point of the new public law of libel the status of the plaintiff. The assumption was that the libel plaintiff, like the incumbent elected-public-official libel plaintiff in *Times*, would by his status alone be able to secure access for his ideas. The restraint on debate to which this Court specifically addressed itself in *Times* was the inhibiting effect of a large libel judgment in a defendant newspaper. But the restraint on debate which the progeny of the *Times* brought more clearly into focus was that the status of the plaintiff was not a steadfast guarantor of debate.

Cases in this Court following *New York Times* raised doubts along these lines. A case which suggested that some of the assumptions of *New York Times* should be rethought was *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

In *Time, Inc v. Hill, supra*, the opinion for the Court per Mr. Justice Brennan pointedly raised, but did not resolve, the issue of whether the standard of reckless or knowing falsehood "should be applicable both to persons voluntarily and involuntarily thrust into the public limelight."

The fact that those suffering at the hands of the media have difficulty in entering the market place was sensitively discussed in the opinion, concurring in part and dissenting in part, by Mr. Justice Harlan in *Time, Inc. v. Hill, supra.* The *Hill* case presented a particular challenge to the ability-to-secure access assumption of the *New York Times* doctrine since there the persons who objected to an exploitative media use of personal tragedy were private not public persons:

> "First, we cannot avoid recognizing that we have entered an area where the 'marketplace of ideas' does not function and where conclusions premised on the existence of that exchange are apt to be suspect * * *. Here such competition is extremely unlikely for the scrutiny and discussion of the relationship of the Hill incident and the play is 'occasioned by the particular charges in controversy' and the matter is not one in which the public has an 'independent interest.' *It would be unreasonable to assume that Mr. Hill could find a forum for making a successful refutation of the Life material or that the public's interest in it would be sufficient for the truth to win out by comparison as it might in that area of discussion central to a free society.* Thus the state interest in encouraging careful checking and preparation of pub-

lished material is far stronger than in *New York Times. The dangers of unchallengeable untruth are far too well documented to be summarily dismissed.*" 385 U.S. 374 at 407-408. (Emphasis added)

The implications of this excerpt from Justice Harlan's concurrence in *Time, Inc. v. Hill, supra*, are clear: The state may act to rectify a critical malfunction in the marketplace of ideas. The state may act to remedy a situation where it is possible for "unchallengeable untruth" to prevail. Indeed, the *Miami Herald* and all the *amici* who have filed briefs in their behalf in this case are essentially asking to be allowed to attack their prey as they will and to let that attack remain "unchallengeable". Mr. Justice Harlan stressed in his concurrence in *Time, Inc. v. Hill, supra*, that there was a "vast difference in the state interest in protecting individuals like Mr. Hill from irresponsibly prepared publicity and the state interest in similar protection for a public official." There is similarly a great difference between the ability of an incumbent politician to secure permission to respond to criticism in the media, and the ability of a controversial teachers' union leader like Tornillo, who has already aroused the hostility of powerful governmental and media forces in Miami because of his insistence on the collective bargaining rights of public school teachers.

Absent the Florida right of reply statute, Tornillo would be effectively muzzled in Dade County, Florida. The facts in this case illustrate the loneliness of someone in a position like Tornillo's. When Tornillo sought to enforce his right of reply remedy in court, the Attorney General of the state of Florida announced his intention not to de-

fend the statute. On appeal to the Supreme Court of Florida, the local ACLU chapter allied itself with the *Herald*. In this court, the *amici* on behalf of the *Herald* are almost impossible to count. Newspaper and broadcaster trade associations, newspaper chains, and other mass media ownership groups have all joined to protest Tornillo's attempt to enforce the Florida right of reply statute.

The *amicus* briefs in this case call the Florida right of reply law, variously, a "tax", "censorship" and a "prior restraint". But neither the *amici*, nor appellant have much to say about the dislocation the inflation of the *Times* doctrine has created with respect to individual rights of reply, privacy and reputation. Indeed, one of the *amici* in this case, the *Washington Post*, in an editorial on March 13, 1974 entitled "Fiddling With the First Amendment" made the following remarks in commenting on President Nixon's proposals for Right of Reply legislation:

> "The national commitment to robust, uninhibited, political debate encompasses the liberty to criticize, to exaggerate, to vilify, and to defame."

Washington Post, editorial, March 13, 1974, A-26.

Appellee submits, contrary to this position, that the *New York Times* doctrine was not born out of a desire to confer on the press a right to defame those who can no longer recover in damages, but rather out of a desire to encourage the people to engage in criticism and discussion of public issues. Several years after the *New York Times* case was decided, the constitutional inadequacy of an approach to the *Times* doctrine which regarded it as con-

ferring on the press a new right to defame,[1] and nothing else, was described as follows:

> "Purporting to deepen the constitutional guarantee of full expression, the actual effect of the decision is to perpetuate the freedom of a few in a manner adverse to the public interest in uninhibited debate. Unless the *Times* doctrine is deepened to require opportunities for the public figure to reply to a defamatory attack, the *Times* decision will merely serve to equip the press with some new and rather heavy artillery which can crush as well as stimulate debate." Barron, *Access to the Press—A New First Amendment Right*, 80 Harvard Law Review 1641 at 1657 (1967).

In *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971), the plurality opinion for the Court made explicit the questions about whether *New York Times* doctrine had

[1]In the *Washington Post* editorial of March 13, 1974, A-26, it was stated: "Or as the Supreme Court said in another case 'it is a prized American privilege to speak one's mind, although not always with perfect good taste on all public institutions.'" Speaking one's mind is indeed a prized American privilege. But no one concerned about freedoom of discussion is challenging the desirability of speaking one's mind. The issue is whether the dominant media in the community can shut out a reply even in those limited and carefully defined situations where a state by statute has provided for it. To be sure, it may be said, as the *Washington Post* reasons in its *amicus* brief in this case that the daily newspaper in a community is not the only forum for expression. The *amicus* brief for the *Post* in this case cheerfully surveys the wreckage of competitive daily newspaper situations across the country and styles the death of these papers "creative destruction." The theory apparently proceeds on an argument that if one can not secure a response in the forum in which one has been attacked, then one should simply get another forum. In a recent case involving a judicial refusal to permit a *private* restraint on expression, a perceptive, and perhaps justifiably scornful, comment was made on this type of reasoning. See *Evans v. American Federation of Television and Radio Artists,*

created a new imbalance in the marketplace of ideas which had been implicit in *Time, Inc. v. Hill, supra.* In *Rosenbloom*, a radio station had made repeated reports that Rosenbloom had been arrested for possessing obscene literature and that the police had seized obscene books. Rosenbloom was acquitted of criminal obscenity charges and brought suit against the radio station for libel. An appreciation of the significance of the plurality opinion in *Rosenbloom* is vital to understanding the constitutional analysis utilized by the Supreme Court of Florida in the decision below. The Supreme Court of Florida in the decision below relied on the guidance provided by *Rosenbloom* for its conclusion that the Florida right of reply statute is constitutional. Such reliance was entirely appropriate. The plurality opinion in *Rosenbloom* not only assumed the constitutionality of right of reply legislation but counseled the states to enact such legislation. In *Rosenbloom*, the assumption found in *New York Times v. Sullivan, supra*, and its progeny, that individuals who were the subject of a press

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354 F.Supp. 823 at 839 (S.D. N.Y.); on appeal to the United States Court of Appeals for the Second Circuit, *sub nom. Buckley v. American Federation of Television and Radio Artists*, Docket no. 73-1667. (In *Evans*, the federal district court held that requiring radio-television commentators to join a union and submit to union discipline as a condition to going on the air was a chilling of the First Amendment rights of broadcast commentators who expressed their personal opinions concerning news and public affairs):

> "Radio and television differ from the press in that the press is open, at least in theory, to all. *Any citizen (if he has Five Million Dollars) is legally free to start a competing newspaper in any of our major cities to set forth his own opinion.* A latter day Paine with a mimeograph machine is deemed to have access to the 'marketplace of ideas' for Constitutional purposes, equal to those who own and control the leading journals of news and opinion. Accordingly, there is no legal requirement for the press to present a 'fair' balance of opinion and analysis. Subject only to the laws of libel, there is not even a requirement of truthfulness and accuracy." (emphasis added)

attack would have recourse to respond in the press because of their status as persons worthy of press attack was frankly challenged by the plurality opinion for the Court. In the years that had elapsed between 1964, the year the *Times* case was decided, and 1971, the year this Court decided *Rosenbloom*, the *Times* doctrine was steadily pushed forward.

The "actual malice" standard which had been applied to the incumbent elected public official (where the assumption of "actual malice" was perhaps strongest) was extended to non-elected officials, *Rosenblatt v. Baer*, 383 U.S. 75 (1966), to public figures, *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), and finally, in *Rosenbloom* to "public issues". In *Rosenbloom*, this Court shifted the focal point of the applicability for the new public law of libel from the status of the plaintiff to the content of the defamation. Instead of making the touchstone of constitutional protection in this area the issue of whether the libel plaintiff was a public official or a public figure the plurality opinion for the Court in *Rosenbloom* said the key to the new protection of *New York Times*, and the invocation of the *New York Times* privilege, was whether the content of the alleged defamation involved the ventilation of public issues.

The crucial factor in the recitation of these developments for the resolution of this case is found in the reason the plurality opinion for the Court in *Rosenbloom* decided to depart from the emphasis the prior case law has given to whether a libel plaintiff was in any sense a public personage. The reason, of course, that prior law had such a focus was founded in this Court's implicit assumption in *Times*

that public persons "would be able to attract media attention to counter criticism." The Court in *Rosenbloom* said on this point:

> "Thus the unproved, and highly improbable, generalization that an as yet undefined class of 'public figures' involved in matters of public concern will be better able to respond through the media than private individuals also involved in such matters seems too insubstantial a reed on which to rest a constitutional distinction." 403 U.S. 29 at 46-47.

But the plurality opinion of this Court, in *Rosenbloom*, written by Mr. Justice Brennan, and joined in by Chief Justice Burger and Mr. Justice Blackmun rejected this original implicit assumption of the *Times* doctrine. Although still quite properly adhering to the *Times* emphasis on debate, the Court in *Rosenbloom* gave recognition to the fact that for debate to take place there must be some "ability to respond."

The Court in *Rosenbloom* went on to point out that the way to really assure debate was to provide for right of reply legislation:

> "If the States fear that private citizens will not be able to respond adequately to publicity involving them, the solution lies *in the direction of ensuring their ability to respond*, rather than in stifling public discussion of matters of public concern." 403 U.S. 29 at 47. (emphasis added)

To this comment the Court in *Rosenbloom* appended the following footnote:

> "Some States have adopted retraction statutes or right of reply statutes. See Donnelly, The Right of Reply: An Alternative to an Action for Libel, 34 Va.L.Rev. 867 (1948); Note, Vindication of the Reputation of a Public Official, 80 Harv. L. Rev. 1730 (1967). *Cf. Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1969).
>
> One writer, in arguing that the First Amendment itself should be read to guarantee a right of access to the media not limited to a right to respond to defamatory falsehoods, has suggested several ways the law might encourage public discussion. Barron, *Access to the Press — A New First Amendment Right*, 80 Harv. L. Rev. 1641, 1666-1678 (1967). It is important to recognize that the private individual often desires press exposure either for himself, his ideas, or his causes. *Constitutional adjudication must take into account the individual's interest in access to the press as well as the individual's interest in preserving his reputation, even though libel actions by their nature encourage a narrow view of the individual's interest since they focus only on situations where the individual has been harmed by undesired press attention.* A constitutional rule that deters the press from covering the ideas or activities of the private individual thus conceives the individual's interest too narrowly." 403 U.S. 29 at 47 n. 15. (Emphasis supplied.)

Appellant tries to confine solely to defamation cases the deep concern of the Court expressed in *New York Times v. Sullivan* for the unfettered exchange of opinion and the sympathy for rights of reply expressed by the plurality opinion in *Rosenbloom* to libel. But even professed critics of rights of access and reply realize that these cases cannot be so limited: "Although technically a decision restricting the traditional power of the states to impose sanctions for libel, *New York Times* undoubtedly does support the Florida Court's concern for a 'free flow of information.'" See Lange, *The Role of the Access Doctrine in the Regulation of Mass Media: A Critical Review And Assessment*, 52 N. Car. L. Rev. 1 at 64 (1973). The underpinning which *New York Times v. Sullivan* and *Rosenbloom* provides to the decision below is a rational and necessary one.

If one examines this Court's plurality opinion in *Rosenbloom* closely, it is clear that the Court's opinion did not limit the approach to right of reply legislation to libel cases. Thus the Court suggests the states "ensure their ability to respond" in order that private citizens will be able adequately to respond to "*publicity* involving them." Note that the Court does not say "defamation involving them" but "publicity" — a much broader term and a term incidentally even broader than the limitation to "attack" provided in the Florida right of reply statute. See 403 U.S. 29 at 47.

This Court spoke with even greater clarity, however, in *Rosenbloom* on this point:

> "*Constitutional adjudication must take into account the individual's interest in access to the press as well as the individual's interest in pre-*

> *serving his reputation*, even though libel actions by their nature encourage a narrow view of the individual's interest since they focus only on situations where the individual has been harmed by undesired press attention." 403 U.S. 29 at 47 n 15. (Emphasis supplied.)

In this passage, the Court expresses support for the creation of a remedy by the states which would take into account the individual's interest in access to the press as well as his interest in preserving his reputation. The Court makes it clear that its remarks urging the enactment of right of reply legislation were bred out of larger concerns than merely to afford a right of reply to the libel plaintiff, important as that interest undoubtedly is.

Appellant complains that appellee has not asked for a libel remedy. Similarly appellant complains that appellee did not ask for a retraction. Instead, appellant says appellee chose to bring a proceeding to enforce the Florida right of reply statute. See Appellant's Brief, p. 5. The implication is that this choice was somehow improper. Appellee used the right of reply statute because under the *New York Times v. Sullivan* doctrine it is doubtful if a libel remedy would have been available to him. The Florida right of reply statute was the only legal resource open to someone in Tornillo's situation. Even if Tornillo had chosen to bring a defamation action, the Florida retraction statute would not have served the First Amendment rights of Tornillo and the Miami community as effectively. The merit of a state right of reply statute over a state retraction statute in a case like this was cogently set forth by this Court's opinion in *Rosenbloom:*

> "While the argument that public figures need less protection because they can command media attention to counter criticism may be true for some very prominent people, even then it is the rare case where the denial overtakes the original charge. Denials, retractions, and corrections are not 'hot' news, and rarely receive the prominence of the original story." 403 U.S. 29 at 46.

The years that have elapsed since this Court's decision in *New York Times* reveal the following development: the removal of the governmental restraint on the press provided by the "actual malice" standard, although designed to secure vigorous debate on public issues has, to some extent, been checkmated by private censorship. The appropriate and constitutional corrective to that censorship is the right of reply conferred by Florida Statute § 104.38.

This case bears compelling witness that freeing newspapers from libel litigation does not in itself produce debate:

> "The irony of *Times* and its progeny lies in the unexamined assumption that reducing newspaper exposure to libel litigation will remove restraints on expression and lead to an 'informed society.' But in fact the decision creates a new imbalance in the communications process." Barron, *Access to the Press—A New First Amendment Right*, 80 Harv. L. Rev. 1641 at 1657 (1967).

The plurality opinion in the *Rosenbloom* case is awake to the realization that freeing the press from heavy libel

judgments in matters involving public issues does not necessarily produce debate. The opinion is similarly sensitive to the concept that new immunities may require new responsibilities.

The Florida right of reply statute is exactly the carefully drawn limited right of reply statute which the plurality opinion in *Rosenbloom* suggested the states enact in order to provide a remedy for the person attacked who is otherwise unable to "counter criticism in the media."

Application of the statute in controversy, as precisely limited — *i.e.*, replies to editorial attacks — shows that the issues in the case dwell at the very center of the core of interests which this Court considered worthy of protection in *New York Times*. Florida Statute § 104.38 provides assurance that the voters get a two-way exchange of opinion. The statute ensures that during a campaign voters have the benefit of both the editorial attack on a candidate and the candidate's reply to the attack. The replies to the editorials in this case involve speech concerning public affairs. This Court has properly said with regard to such expression: "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 376 U.S. 64 at 74 (1964).

For the foregoing reasons, appellee contends that F.S. § 104.38 adds to debate, adds to content, and in no way subtracts from expression. Appellee further contends that F.S. § 104.38 is directly responsive to the heavy emphasis given to the free interchange of opinion on issues of public affairs evident in the decisions of this

Court from *New York Times v. Sullivan*, to *Rosenbloom, v. Metromedia.*

It is not necessary for this Court to decide whether state legislators could constitutionally enact a right of reply statute broader than the carefully circumscribed statute, whose scope has been narrowly construed, by the decision below. It is similarly not necessary to resolve whether courts through the process of constitutional interpretation could judicially fashion a right of reply to fit these facts. This case only presents the issue of whether the First Amendment is offended when a state has chosen, as Florida has, to provide a statutory right of reply remedy to meet the precise and limited facts of this case. Appellee contends that the First Amendment is served and not violated by F.S. § 104.38. Appellee has attempted to show that the Florida right of reply statute is itself profoundly responsive to the "profound national commitment" to "debate on public issues." Appellant concludes on the basis of the foregoing analysis that F.S. §104.38 is completely harmonious with that commitment.

III.

THE FLORIDA RIGHT OF REPLY STATUTE IS A PERMISSIBLE REGULATION OF FREEDOM OF THE PRESS BECAUSE OF THE OVERRIDING STATE POLICE POWER INTEREST IN ASSURING FAIR AND HONEST ELECTIONS

Even apart from the contention that the Florida right of reply statute implements the First Amendment, an independent ground for sustaining the statute lies

in the fact that it is a permissible regulation of freedom of the press. The primary objective of the statute is to assure the integrity of the election process and to provide for a fair exchange of information during an election campaign. The legislative history of §104.38 reveals no intent to regulate content but demonstrates instead a comprehensive effort to assure open government and open political campaigns. See Keen, *Brief History of Corrupt Practices Act of Florida*, 9 Fla. L.J. 297 (1935). The statute is best understood as an integral part of Florida's electoral code.

§104.38 is but one of the many ways by which the Florida Legislature has sought to insure free and fair elections. Thus, it has enacted F.S. §104.011 et seq. prohibiting corrupt election practices. Among other practices forbidden by Florida in the interest of free and fair elections are:

False swearing in connection with any election: F.S. § 104.011.

Paying a person to register or vote: F.S. § 104.012; § 104.071.

Perpetrating a fraud in connection with an election: F.S. § 104.041.

Neglect of duty by public employees charged with administration of elections: F.S. § 104.051; § 104.11.

Corruptly influencing a vote: F.S. § 104.061.

An employer influencing an employee in connection with voting: F.S. § 104.081.

Illegal voting: F.S. § 104.14; § 104.081.

Disclosing how an elector votes: F.S. § 104.23.

Betting on election results: F.S. §104.25.

Expending more than certain amounts in an election campaign: F.S. § 99.161.

Similarly, F.S. §104.271 prohibits any candidate from falsely stating that another has violated certain election laws. F.S. § 104.31 prohibits certain public employees from engaging in political activities. Until its repeal in 1965, F.S. § 104.34 prohibited one candidate from publishing any attack on his opponent within 18 days prior to an election. F.S. § 104.35 prohibits all candidates from distributing election literature against any other candidate on election day. F.S. § 104.36 prohibits all persons from distributing any political literature within 100 yards of any polling place on election day. F.S. § 104.37 requires the authors of all political advertisements to sign same thereby alerting the public as to the source of the material, and this statute provides that if newspapers print political advertisements, they are also required to publish the name of the political party with which the candidate is affiliated. A regulation of the press, designed like § 104.38 to provide for the fullest and fairest public debate is F.S. § 104.372, which prohibits a newspaper from charging a candidate, for political advertising, ". . . a rate in excess of the regular local rate regularly charged . . . ". Nor may the newspaper charge one candidate more than it charges another.

Considered in its statutory setting, the compelling State interest animating § 104.38 and the legislative purpose behind it are therefore entirely clear: F.S. § 104.38 was enacted, not to censor the press and not to abridge

content; but as part of a legitimate police power objective to provide for free and fair elections.

The Supreme Court of Florida in the decision below has fairly distilled the legislative purpose behind § 104.38:

> "The statutory provision, the constitutionality *vel non* which is being questioned in the instant cause, was enacted not to punish, coerce, or censor the press but rather as a part of a centuries old legislative task of *maintaining conditions conducive to free and fair elections.* The Legislature in 1913 decided that owners of the printing press had already achieved such political clout that when they engaged in character assailings, the victim's electoral chances were unduly and improperly diminished. To assure fairness in campaigns, the assailed candidate had to be provided with an equivalent opportunity to respond; otherwise not only the candidate would be hurt *but also* the people would be deprived of both sides of the controversy." App. p. 19.

A plain reading of § 104.38 proclaims its purpose: *It is designed to avoid a hit-run election charge, concocted by one candidate and a friendly dominant newspaper.* The Legislature in F.S. § 104.38 gave the victim candidate of a hit and run charge in the press, a limited opportunity to respond in the same forum where the attack against him arose.

If the publisher's First Amendment rights are deemed to be incidentally restricted, it has long been held that First Amendment guarantees are not absolute and

may be incidentally burdened or restricted to serve an overriding or compelling state interest.

As Mr. Justice Blackmun observed in the Pentagon Papers case, *New York Times v. United States*, 403 U.S. 713 at 761 (1970):

> "The First Amendment, after all, is only one part of an entire Constitution."

Chief Justice Burger said to similar effect:

> "Only those who view the First Amendment as an absolute in all circumstances — a view I respect, but reject — can find such cases as these to be simple or easy." *Id.* at 748

A law review analysis of the opinions in the Pentagon Papers case has also derived from that case the principle that the majority of the members of this Court share the view that some legislative restriction on First Amendment rights is permissible:

> "On the other hand, the Court has never held the first amendment to be an absolute, and instead *has* consistently recognized that *substantial countervailing state interests may outweigh the value of expression.*" *The Supreme Court, 1970 Term*, 85 Harv. L. Rev. 3, 205 (1971)

Examples of state statutory regulation of the press are far from unique. In the Appendix to this brief are nine separate categories of state legislation regulating

freedom of the press to some extent. This legislation breaks down into the following categories:

(1) Paid political advertisements

(2) Anonymous publications

(3) Legal Publications

(4) Lotteries

(5) Electioneering In Vicinity of Polling Places

(6) Advertisements for Divorce

(7) Retraction and Mitigation of Damages

(8) Crimes Involving Sex

(9) Boycott Statutes

A comparative study of this body of legislation reveals that much of it establishes absolute restrictions on content. This is particularly true with regard to the state legislation in categories 2, 5, 6, and 8. Thus, some state legislation absolutely prohibits press publication of specified anonymous publications; other legislation absolutely prohibits various forms of expression in the vicinity of polling places. Similarly, there are extant state restrictions on publishing advertisements for divorce, as well as state legislative prohibitions barring the reporting of names of victims in sex cases. The legislation summarized above can, like § 104.38, be defended against a charge of First Amendment infringement, since each such class of state legislation affecting the press can be justified by an overriding state police power purpose. For example, state restraints on reporting names of victims of sex crimes can be justified by the overriding state interests in protecting privacy of those persons as against the right

to know of the public. *Cf. Cox Broadcasting Corp. v. Cohn*, 200 S.E.2d 127 (Ga. 1973) which is now on review before this Court. (No. 73-938 juris post.) The state interest in an atmosphere of tranquility and in the prevention of unfairness by a restraint on political expression at the polling site arguably overrides an absolute right to exercise First Amendment liberties.

The distinguishing feature of the Florida right of reply statute, § 104.38, which makes it unlike all the legislation described above, is that it serves an independent and overriding police power objective, the integrity of the election process, and yet *does not* abridge content but instead adds to it. In this sense, the implementation of First Amendment values and police power purpose coalesce in the Florida right of reply statute. If § 104.38 effects some incidental restriction on the freedom of the press of publishers, it also serves to fulfill the exercise of First Amendment rights of "citizen critics" like Tornillo. The assurance of fair and free debate which the statute provides gives particular strength to the position that § 104.38 is valid because it serves a compelling state interest.

In support of an argument that § 104.38 cannot be so justified, appellant relies on a recent Massachusetts opinion, the *Opinion of the Justices*, 298 N.E. 2d 829 (Mass. 1973) in which the Supreme Judicial Court of Massachusetts declared a statute requiring publication of political advertising unconstitutional. Under the proposed statute, a newspaper would have been required to print paid political advertising of a candidate if the paper had already accepted a political advertisement from another candidate for the same public or political office. The pro-

posed statute also would require newspapers to publish political ads on issues to be submitted to the voters if the paper had already accepted advertising on another position with regard to the same issue.

The Supreme Judicial Court of Massachusetts stated "First Amendment freedoms may be constitutionally abridged if the governmental regulation furthers an important or substantial government interest . . . " at 834. But the Court apparently concluded that governmental interest had not been sufficiently demonstrated to result in a conclusion of constitutionality with regard to the proposed statute:

> "However, *compulsion to publish all responsive political advertisements*, applicable to all newspapers and other publications of general circulation in the Commonwealth *goes beyond what is essential to the furtherance of any interest of a State in its citizens having a right* of access to newspapers in order to express, at their expense, political ideas which otherwise would not be published. See Barron, Access to the Press — A New First Amendment Right, 80 Harv. L. Rev. 1641, 1676-1678." *Id.* at 835 [Emphasis added]

With respect to the implications of this excerpt for the resolution of this case, it certainly appears to be clear that the Supreme Judicial Court of Massachusetts did not exclude the possibility that *some* state interests might be sufficient to constitutionally authorize the enactment of a state statute providing a right of access to newspapers to their citizens to express "political ideas which

otherwise would not be published." The page references in the law review article to which the Massachusetts Supreme Judicial Court refers, makes this precise point. Thus, it is stated there that the enforcement of a "right of access, whether created by a court or legislature" must be "carefully defined." It is also suggested that the key to validity of a carefully limited right of access statute is "whether the material for which access is sought is indeed suppressed and underrepresented by the newspaper." Barron, *Access to the Press — A New First Amendment Right*, 80 Harv. L. Rev. 1641, 1676-1677 (1967).

Can there be any question that Tornillo's replies in the *Miami Herald's* editorials were "suppressed" in this case?

The state interest furthered by the statute involved in this case, and demonstrated by the *facts* of suppression of expression in this case, is far greater than the abstract issue presented to the Massachusetts Court for an advisory opinion. The Florida right of reply statute deals with the hit-and-run charge. If there is an editorial blunderbuss aimed at a candidate, the statute equips the candidate with the armor of reply.

Appellee submits that when a paper editorially puts its powers of persuasion and prestige against a candidate during an election, the state interest in assuring that the public has the benefit of the candidate's response, raises a claim of a higher First Amendment dimension, and a more substantial state interest than was the case with the proposed Massachusetts statute.

The essential distinction between the proposed Massachusetts statute and the Florida right of reply statute is that the right of reply is only furnished by Florida after the paper itself has launched an attack on a candidate. The legislative interest in protecting against one-sidedness when the prestige and power of a dominant daily newspaper is directed against a political candidate is far stronger than the state's interest in political ads to one candidate but not another.

In light of the foregoing, appellant submits that 104.38 should be upheld even if this Court should conclude that the statute does in some measure infringe freedom of the press as newspaper publishers conceive that freedom. In *Pittsburgh Press Co. v. The Pittsburgh Commission on Human Relations*, ____ U.S. ____, 37 L.Ed.2d 699 (1973), this Court upheld an order of the Pittsburgh Commission on Human Relations (as modified by state Courts) which forbade newspapers from, with some exceptions, carrying "help-wanted" advertisements in sex-designated columns. This Court rejected the contention that this ban on so designating "help wanted" ads was a prior restraint. The Court concluded that this regulation of freedom of the press was permissible because the speech at issue was "commercial speech." Nevertheless, the restriction which was upheld did directly restrict content even though that content was described as unprotected "commercial speech." If the order of the Pittsburgh Human Relations Commission restricting press content is valid, this regulation, also serving a valid police power purpose is *a fortiori* constitutional since it subtracts nothing from the realm of free expression but adds to it.

In *Branzburg v. Hayes*, 408 U.S. 665 (1972), this Court made it very clear that its refusal to establish a newsman's privilege authorizing newsmen to refuse to testify before a grand jury in no way restricted state legislatures "to recognize a newsman's privilege, either qualified or absolute." 408 U.S. 665 at 706 (1972). Such newsman's shield legislation obviously would have to arrive at an accommodation between the police power interest in securing the integrity of the grand jury process and the claim that freedom of the press demands some protection for newsman's privilege. If it be said, that state Shield law legislation is valid because it aids freedom of the press, appellee responds: Precisely so. § 104.38 also serves a legitimate police power interest of the state and aids freedom of the press.

In conclusion, appellant submits that even if § 104.38 is deemed to restrict freedom of the press, the statute should be upheld because of the compelling state interest served by a statute designed, as is § 104.38, to assure free and fair debate between a candidate and the press during a political campaign. Finally, appellate submits that, in this context, the constitutional status of § 104.38 is unique since it fulfills a legitimate police power and at the same time serves at least some First Amendment objectives. In some circumstances, the strength of the police power purpose should prevail against a claim of incidental First Amendment restriction by the appellant newspaper publisher.

IV.

THE FLORIDA RIGHT OF REPLY STATUTE, F.S. §104.38, IS NEITHER IMPERMISSIBLY VAGUE NOR UNNECESSARILY BROAD

Some of the *amici* have tried to portray this case as a proceeding involving criminal penalties. The *Miami Herald* in its petition for rehearing to the court below had urged precisely the same argument: §104.38 was a criminal statute and as such failed to meet the constitutional standards of precision required of such statutes. However, in its decision denying the petition for a rehearing, the Supreme Court of Florida specifically foreclosed this argument in this proceeding. The Supreme Court of Florida pointed out that Tornillo did not seek a "criminal penalty" and, further, that the "validity *vel non* of the criminal penalty is not here involved." See App. p. 39.

The vagueness objections to the statute urged by appellant are without force. This is a civil, not a criminal action. Thus, reliance by appellant on cases involving criminal prosecutions such as *Winters v. New York*, 333 U.S. 507 (1948) is misplaced.

The decision below denying the *Miami Herald's* petition for rehearing stressed the civil nature of this action:

> "As was emphatically stated in the opinion of this Court, the *action underlying this cause before us is a civil action*, which was filed in the Circuit Court for the Eleventh Judicial Circuit seeking to require appellee to publish appellant's reply

pursuant to Florida Statute §104.38, and for damages." App. p. 39. (Emphasis added.)

"Even had this Court found the statute, the constitutionality *vel non* which is being questioned *sub judice*, not to be sufficiently definite and specific to support a criminal penalty, this criminal penalty provision would not be fatal to the statute because the statute is so constructed that *the criminal penalty can be easily severed and deleted and still leave a complete legislative expression establishing a civil right to damages.*" App. p. 40. (Emphasis added.)

Amid much talk of "chilling peril" and "pre-publication peril," appellant does acknowledge that "criminal penalties" are simply not involved in this case and that only civil remedies, the right of reply or damages, are involved. See Appellant's Brief, p. 36. Still appellant contends that the spectre of a damage action renders a "chill" because of the doubts that perplex appellant concerning the meaning of the statute's language.

As the Supreme Court of Florida, in the decision below, has acutely pointed out, the Florida retraction statute, §770.02,[4] contains statutory language virtually identical to

[4]§770.02 Correction, apology, or retraction by newspaper. If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case shall recover only actual damages.

that employed in the Florida right of reply statute, §104.38. The terms "conspicuous place" and a "full and fair correction" in the retraction statute are no more nor less precise than "any reply" or "personal attack" in the right of reply statute. F.S. §770.02 works to the financial advantage of publishers by removing, if the statutory requirements are met, the threat of punitive damages. As a result, no vagueness objections have been raised to the equivalent of the furor which now surrounds F.S. §104.38. But the fact that a statute serves the public interest in furthering debate in the political process should not be allowed to serve as a disincentive to comprehending otherwise clearly understandable statutory language. The Supreme Court of Florida, in the decision below, denied the *Miami Herald's* petition for rehearing and pointed out that the state retraction statute, similar in language to the right of reply statute, has not only been upheld against constitutional attack but has been quite readily used by Florida newspaper publishers when it suited their financial advantage:

> "A comparable statute to Florida Statute, §104.38, F.S.A., requiring a full and fair correction, apology, and retraction to be published in the same editions or corresponding issues of the periodical in which said article appeared, and in as conspicuous place and type as was said original article, as an abatement of the publisher's liability for punitive damages, was held constitutional by this Court in *Ross v. Gore*, 48 So.2d 412 (Fla. 1950). *Courts have generally regarded this type of statute to be in aid of a free press.* We take judicial notice that this statute has been

> frequently used to avoid punitive damages apparently with no adverse effect to newspaper publishers. But, indeed, the statute has been utilized to their financial advantage."
> App. pp. 41-42. (Emphasis added)

In this civil proceeding to enforce the Florida right of reply statute, the appellant newspaper publisher, in the view of the appellee, has a choice: either publish a full and fair correction or respond in damages. The choice offered newspaper publishers between being subject to liability for damages or publishing a retraction is not unique to Florida, it is the common pattern of retraction statutes in the American states. Just as the retraction statute procedure is neither chilling to First Amendment rights nor void for vagueness, so the very similar right of reply procedure which is enforced in a civil proceeding under Florida Statute §104.38, is also not open to these objections.

Despite the fact that the vagueness precedents appellant cites are derived from cases involving criminal proceedings, and despite the persuasive analogy between Florida's civil retraction statute and this civil proceeding to enforce a right of reply pursuant to Florida Statute §104.38, the appellant insists that the Florida right of reply statute is defectively vague. Appellant says that among the "vagueness" problems with the statute are six principal questions. See Appellant's Brief, pp. 34-35. Appellee will therefore examine each of these "vagueness questions", *seriatim*, in order to show that the answers to these "questions", insofar as they relate to the facts, have been vividly clear to the appellant from the very beginning of this controversy:

1. Appellant asked with professed mystification: "What is a newspaper"? We doubt that appellant is in any serious doubt as to whether *it* is a newspaper under §104.38. Obviously, it is a newspaper. What other print media are covered by that statutory "term" in F.S. §104.38 remains for later decision by the appropriate state judicial forum. To raise a "vagueness" objection on these facts as to whether the *Miami Herald* is a newspaper is disingenuous to say the least.

2. Appellant says it is very bewildered as to the meaning of the statutory term "columns". Does that term include, it asked for example, news articles as well as editorials? Appellant should not be permitted to escape from its obligation of providing a response to appellee in a controversy which it precipitated by raising questions of statutory interpretation not presented by this case. Whether or not the term "columns" as understood by the Florida legislature in 1913 was, as we might fairly suspect, limited to editorial columns, that is certainly the posture of this case before this Court. Whether the statutory terms "columns" should receive a more inclusive interpretation than "editorials" would be a matter for state judicial determination in a case which raised such an issue. The facts of this case, however, do not require any ruling broader than a holding that the statutory term "columns" clearly embraces "editorials" and, therefore, the statute was properly invoked by Tornillo in this case.

3. The next conundrum that appellant raises concerns the meaning of the statutory terms "assailing the personal character" of a political candidate or an "attack" upon his official record. Appellant says in its brief, and apparently with a straight face, that it is not clear to

them whether their editorial abuse of Pat Tornillo, with its suggestion of venality, constituted an attack on Tornillo's personal character. In the appellant's editorial of September 29, 1972, the appellant accused Tornillo of "shakedown statesmanship" and then made this final statement:

> "Give him public office, says Pat, and he will no doubt live by the Golden Rule. Our translation reads that as more gold and more rule." (App. p. 8).

Even if one's sensibilities are sufficiently dulled to be unable to see in such language an attack on "personal character", appellant itself has provided the reason as to why there can be no doubt as to the applicability of the statutory term "attack on personal character", to the editorials in question. The Supreme Court of Florida has itself authoritatively characterized this kind of editorial commentary as a personal attack meriting a reply. See App. p. 16. In fact, appellant itself has conceded this characterization on the very page of its brief where it raises a vagueness challenge to the meaning of the statutory term, assailing or attacking "personal character". Appellant's brief, p. 35, fn. 81. In the light of this construction and this concession, it is impossible to find a serious question of "vagueness" lurking in the issue of whether the abuse heaped on Tornillo by appellant constitutes an attack on "personal character" under F.S. §104.38.

Appellant also asks whether judges could seek a right of reply under the Florida right of reply statute. Appellant has made this a matter of more than academic interest since it has devoted considerable editorial space to denounc-

ing the decision below. However, it is entirely inappropriate for either of the parties in this proceeding to ask this court to resolve an issue which is in no way raised by the facts of this case and which, in any case, must be first passed on by the Florida courts.

4. Appellant raises the question whether a candidate must be specifically named in order to be entitled to a right of reply under §104.38. Here again this question is entirely irrelevant to this proceeding. Both the *Miami Herald* editorials in question mentioned Pat Tornillo specifically by name. See App. pp. 5 and 8.

5. This question inquires into the meaning of the statutory requirement that publication of the reply be in an equally "conspicuous" place. Is page four more conspicuous, asks appellant, than page five? The answer to this is short and clear. Tornillo would have been happy to have his reply printed in any page of the *Miami Herald* including the last page. Surely, a party which has steadfastly refused to give *any* reply at all to a candidate as required by statute should not be permitted to suggest that it refused to publish a reply because it didn't know what page to print the reply.

6. In this question appellant argues that the statute presents questions on "how lengthy a reply may be made." This again raises an issue not presented by these facts. A cursory glance at Tornillo's replies will show that they took no more space than the *Herald's* editorials. See App. pp. 6 and 9.

Further, the appellant makes the astonishing statement that if an editorial were to say "John Doe is not fit

for office" it would not enhance serious public discussion to permit John Doe to say: "I am fit for office." Surely the community will benefit (to say nothing of Doe's interest in his good name) if Doe is permitted to deny such a bald and unsubstantiated allegation. In fact, this hypothetical exposes the essence of appellant's case: serious public discussion is enhanced if a newspaper may make a bald and unsubstantiated charge against a candidate but if the person so pilloried wishes to reply in so many words, such a reply violates the First Amendment. Just to state this position is to underscore its unfairness, and its inability to grasp the significance of the high place unfettered debate on public issues has been accorded by the First Amendment decisions of this Court.

Appellant in its specification of questions designed to show a "vagueness" defect in the statute has resorted to conjecturing a parade of horribles. An examination of this parade shows that those questions of statutory construction which are really raised by the facts are readily answerable. As to other hypothetical statutory construction issues which might possibly be used in the future to support even the slightest "vagueness" argument, it is not appropriate to adjudicate such issues before the authoritative gloss of the state Supreme Court has been obtained in cases squarely raising these issues.[5]

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[5]Only a partial interpretative gloss has been given by the Florida Supreme Court; all that was deemed necessary to decide the case before it:

> "Because of the longstanding policy of this Court to give a statute, if reasonably possible, a construction supporting its constitutionality, we hold that the mandate of the statute refers to 'any reply' which is wholly responsive to the charge made in the editorial or other article in a newspaper being replied to and further that such reply will be neither libelous nor slan-

The complete answer to appellant's fanciful questions with regard to § 104.38 was provided in an opinion of this Court, delivered by Mr. Justice Frankfurter, in *New York v. United States*, 326 U.S. 572 at 583 (1946):

> "The process of Constitutional adjudication does not thrive on conjuring up horrible possibilities that never happen in the real world and devising doctrines sufficiently comprehensive in detail to cover the remotest contingency. Nor need we go beyond what is required for a reasoned disposition of the kind of controversy now before the Court."

In connection with its vagueness argument, appellant says that a limiting construction should not be used in interpreting § 104.38, since here the statute allegedly "chills" First Amendment rights. Thus, appellant says the statute should be voided. See Appellant's Brief, p. 33. Appellant has not told us how this statute "chills" First Amendment rights. However, early in Appellant's Brief we are told that newspapers, in order "to avoid" the "compulsion" to publish replies "will restrict or eliminate publication of criticism and comment on political candidates." The effect of a right of reply statute will be to "suppress rather than enhance public debate." Appellant's Brief, p. 9.

The argument then is that rather than comply with a law that they believe wrong, even if it is declared con-

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derous of the publication nor anyone else, nor vulgar nor profane." App. p. 30.

The Florida Supreme Court concluded that:

"We do not believe that Florida's statutory right of reply is lacking in any of the required standards of preciseness. The statute is sufficiently explicit to inform those who are subject to it as to what conduct on their part will render them liable to its penalties." App. pp. 28-29.

stitutional, newspapers will retreat from public issues rather than "surrender their editorial freedom". If even the limited form of fair play required by §104.38 were to be required, we are told, newspapers would rather not play at all.

If an editorial could warrant a reply, newspapers will simply choose not to print the reply: no attack; no reply. This, apparently, is the "chill" that the right of reply statute at issue in this proceeding places on First Amendment rights according to appellant.

The "chilling effect" concept arose from this Court's famous decision in *Dombrowski v. Pfister*, 380 U.S. 479 (1965). In *Dombrowski*, this Court held that plaintiffs were entitled to an injunction to prevent state officers from prosecuting, or threatening to prosecute them under an unconstitutional statute. Such threats were quite properly held to result in the unconstitutional "chilling" of First Amendment rights.

It is a disservice to the values protected in *Dombrowski*, and the "chilling effect" concept associated with that case, to suggest that it supports a view that debate should be silenced. Certainly there is a "chilling effect" if one knows that in order to engage in protected political expression or activity, one might have to go to jail before one could obtain judicial relief to set the conviction aside. But surely it tortures the meaning of words, and ignores the theory of knowledge behind the constitutional guarantee of freedom of speech and press, to say: I will no longer say what I wish because if I did, I might have to let my opponent speak and I would rather be silenced forever than give my adversary the only effective forum he might ever have.

Finally, additional and persuasive authority for concluding by analogy that a civil proceeding under Florida Statute §104.38 is possessed of the requisite statutory precision and is in no way impermissibly vague may be found in this Court's unanimous and landmark decision in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). In that case, the Supreme Court reviewed a constitutional attack, on vagueness, among other grounds, on the FCC's fairness doctrine and personal attack rules. The personal attack rules, 32 Fed. Reg. 11531, 33 Fed. Reg. 5362, are as follows:

> "*Personal attacks; political editorials.*
>
> (a) When, during the *presentation of views* on a controversial issue of public importance, *an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group*, the licensee shall within a reasonable time and in no event later than 1 week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) *an offer of a reasonable opportunity to respond over the licensee's facilities.*" (Emphasis added.)

The Florida right of reply statute (F.S. §104.38) states as follows:

> "*Newspaper assailing candidate in an election; space for reply.*
>
> If any newspaper in its *columns assails* the *personal character* of any *candidate* for nomina-

> tion or for election in any election, or charges said candidate with *malfeasance or misfeasance in office*, or otherwise *attacks his official record*, or gives to another free space for such purpose, such newspaper shall upon request of such candidate immediately publish free of cost any reply he may make thereto in as *conspicuous a place* and in the *same kind of type* as the matter that calls for such reply, provided such reply does not take up more space than the matter replied to. Any person or firm failing to comply with the provisions of this section shall, upon conviction, be guilty of a misdemeanor in the first degree, punishable as provided in §775.082 or §775.083. (Emphasis added.)

We contrast the personal attack rules and the Florida right of reply statute to show that the reach of the former is much broader than the latter. The personal attack rules may be invoked by "the person or group attacked". The response provided by the personal attack rules is thus far more broadly available than the limitation of the Florida right of reply statute to political candidates. The grounds for invoking the rules on the basis of attacks on "integrity" similarly appear more extensive. Further, the personal attack rules may be invoked not merely during a political campaign as is the case with the Florida Statute, but "during the presentation of views on a controversial issue of public importance." Despite the broad reach of the personal attack rules, this Court unanimously held them to be entirely consistent with the First Amendment. The Court's comments on the inadmissibility of a vagueness attack on the application of the personal attack rules to the facts in *Red Lion* are equally apposite here:

"The litigants embellish their First Amendment arguments with the contention that the regulations are so vague that their duties are impossible to discern. Of this point it is enough to say that, judging the validity of the regulations on their face as they are presented here, we cannot conclude that the FCC has been left a free hand to vindicate its own idiosyncratic conception of the public interest or of the requirements of free speech. Past adjudications by the FCC give added precision to the regulation; there was nothing vague about the FCC's specific ruling in *Red Lion* that Fred Cook should be provided an opportunity to reply." 395 U.S. 367 at 395 (1969).

Similarly there is nothing vague about the Supreme Court of Florida's "specific ruling" that Pat Tornillo's right to enforce an "opportunity to reply" under §104.38 is both clear under the statute and may constitutionally be pursued. In addition, Mr. Justice White's observation in *Red Lion* that future vagueness problems in the application of the personal attack rules should be solved by future adjudications is entirely pertinent here. The vagueness "issues" conceived by appellant do not arise from these facts and should be left for resolution to those future cases, if any, which raise them.

This Court's refusal in *Red Lion* to permit *in terrorem* vagueness objections based on hypothetical situations not presented by the facts is equally decisive of the vagueness objections that have been made here:

"We need not approve every aspect of the fairness doctrine to decide these cases, we will not

> pass now upon the constitutionality of these regulations by envisioning the most extreme applications conceivable, *United States v. Sullivan*, 332 U.S. 689, 694 (1948), but will deal with those problems when and if they arise."
> 395 U.S. 367 at 395.

An important and necessary note on appellant's vagueness arguments must be made with regard to appellee's use of *Red Lion* in this, and other respects, in this case. *Red Lion* has been relied on by appellee here, and by the Court below, because its ruling on the vagueness issue and its observations on the true nature of First Amendment protection are relevant to the constitutional issues raised in this proceeding. *Red Lion* was not cited by the Supreme Court of Florida, nor is it cited by appellee here, to even remotely suggest that a fairness doctrine be established for the press. Both the *amici* and the appellant have sought to intrude a pseudo-issue into this case: whether the fairness doctrine should be applied to the press. No such contention has ever been urged by appellee in this case. The issue is far narrower, the constitutionality *vel non*, of Florida's narrowly construed state right of reply statute, whose application is limited to newspaper attacks on political candidates during political campaigns.

In conclusion, it is evident from the foregoing that this non-criminal proceeding to enforce the statute in question, §104.38, is in no sense objectionable on a "vagueness" basis. The statute is narrowly drawn, and its operative terms have been precisely defined and interpreted by the Supreme Court of Florida in the decision below.

V.

THE INCIDENTAL USE OF PRIVATE PROPERTY BY F.S. §104.38 FOR THE EXERCISE OF FIRST AMENDMENT RIGHTS DOES NOT DEPRIVE APPELLANT OF PROPERTY WITHOUT DUE PROCESS OF LAW

Amicus *Washington Post* contends that F.S. §104.38 takes a newspaper's property without due process of law, and, therefore, constitutes an invalid taking. The introduction of this issue into this case at this time constitutes a new matter on appeal and as such, is not, strictly speaking, before the Court. The Supreme Court of Florida noted the issue was not raised by the parties, and then declared that there was no basis in the argument that §104.38 constituted an invalid taking:

> *"Although apparently not raised before the trial court, the brief of Amicus Times Publishing Co. has raised the issue that Florida Statute, 104.38, F.S.A., is a deprivation of property right without due process. With this contention, we can not agree.* Florida Statute 104.38, F.S.A., is a valid exercise of the state police power enacted to assure the integrity of the electoral process. * * *
>
> "We find this argument of deprivation of property rights by being required to furnish free space to be without merit. See *Miller v. Schoene, supra; Marsh v. Alabama*, 326 U.S. 501, at 506 * * *; *Red Lion Broadcasting v. FCC, supra; Rosenbloom v. Metromedia, supra; Chronicle Publishing Co. v. Attorney General.* 94 N.H. 148, 48 A.

2d 478 (1946); *Amalgamated Food Employees v. Logan Valley Plaza, Inc.*, 391 U.S. 308 * * *" App. p. 31. (Emphasis added).

Appellant apparently appreciates the difficulties in lodging a "taking" argument against §104.38 at this juncture since no such contention was brought by it below. Accordingly, appellant in its brief on the merits in this Court makes only one reference to the "taking" issue—in a footnote. See Appellant's Brief, p. 31 fn. 68. In order to establish a "taking" in this case, the requirement of proof would have to be satisfied; a remand would have to be ordered on the point and a trial held on the merits.

Despite the serious procedural objections to the consideration of the "taking" claim, appellee believes that it should make clear its view that ascribing a wrongful "taking" to §104.38 is groundless as a matter of constitutional law and is another example of the upside down view appellant, and allied *amici*, take of some of the basic constitutional issues in this case. If anyone in this proceeding has a right to claim a wrongful "taking," it is appellee, Tornillo, whose good name and personal character have been attacked by appellant, the *Miami Herald*, a newspaper with the largest circulation of any daily newspaper in Florida. With the advent of the new public law of libel, the appellee no longer has any effective right to secure redress for the injury to his reputation in the form of a libel action. In this sense, the *New York Times* doctrine works a taking that has behind it the force and permission of the state. Yet despite this forced "taking" of his reputation, it is urged by *amicus Washington Post* that §104.38 works a taking on the newspaper when the statute requires that a reply be afforded to Tornillo in order to assure that

no injury is done to the community interest in debate. One would think that the addition of such a reply would add an economic increment to the value of appellant's newspaper rather than the contrary.

A state statutory requirement of newspaper space for reply for a political candidate assailed by the paper is no more an invalid taking than is any incidental governmental regulation which affects property. In *Miller v. Schoene*, 276 U.S. 272 (1928), Mr. Justice Stone said for the Court:

> "And where the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property." *Id.* at 279-280.

The principle of *Miller v. Schoene, supra*, is that a police power regulation which incidentally affects property is not, because of that incidental effect, rendered unconstitutional. Professor Joseph L. Sax observed in his influential article on takings under the police power that when a statute makes "an improvement of the public condition through resolution of conflict within the private sector of society, compensation is not constitutionally required." See Sax, *Takings Under the Police Power*, 74 Yale L. J. 36, 67 (1964).

The present case between two private parties, the *Miami Herald* and Pat Tornillo, is an example of the resolution by statute of a private conflict designed to secure, through assuring fair and free debate, an improvement in the public condition.

Even though precedents involving "taking" may be considered helpful, such cases are not the true guide to the resolution of an issue concerning whether §104.38 places an unconstitutional economic burden on appellant. First Amendment cases in this Court beginning with *Marsh v. Alabama*, 326 U.S. 501 (1946) offer far more relevant authority. Particular stress should be placed on Mr. Justice Black's wise counsel in *Marsh* in this regard: "Ownership does not always mean absolute dominion." *Id.* at 506.

The truth is that there is no basis for the contention that when First Amendment rights are exercised, compensation must be paid if property rights are slightly infringed as a result of their exercise. In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), one of the issues that propelled the case to the Supreme Court was whether an individual should be given *free time* to reply under the FCC's personal attack rules. (This Court so held.)

This Court's unanimous opinion in *Red Lion* does not contain the slightest suggestion that the provision of free time under either the fairness doctrine or the personal attack rules was an invalid "taking". If the response to the foregoing emphasis on *Red Lion* as a precedent is that broadcasting is a regulated industry, it should be pointed out that although frequencies are licensed on a three-year basis, the licensee, however, has the right to sell broadcast time and the FCC has no jurisdiction, and has never asserted jurisdiction, over the rates charged by broadcast licensees.

It should be kept in mind that a free space requirement is even less of a burden for a newspaper like the *Miami Herald* than the free time requirement was for a

broadcaster like the Red Lion Broadcasting Co. Broadcast time, unlike newspaper space, is finite. A newspaper is infinitely expandable. If advertising business is up, the paper can put out a larger edition. This is not the situation in broadcasting where the broadcast day is necessarily limited. A grant of free time is a more costly matter to the station manager in broadcasting than is a grant of free space by the newspaper publisher. Yet the Court of Appeals in *Red Lion* considered the free time requirement as a reasonable burden. It is an even more tolerable burden as applied to the press.

The United States Court of Appeals in *Red Lion*, 381 F.2d 908 (D.C. Cir. 1967) considered and rejected the argument that the provision for free reply time under the personal attack rules and the fairness doctrine was unconstitutional:

> "* * * I readily agree that the compulsory granting of free time may, and probably does, impose a burden on the licensees. This burden, however, is not an unreasonable one." *Id.* at 926.

Judge Tamm concluded his opinion in *Red Lion* with the following definitive ruling on the free time issue:

> "Under the facts in this case, the requirement under the Fairness doctrine that a broadcaster may not insist upon financial payment by a party responding to a personal attack does not violate the first and fifth amendments to the Constitution nor is the Doctrine violative of either the ninth and tenth amendments." *Id.* at 930.

Legislative restrictions on the press which affect in an incidental way the ability of newspapers to charge for space are not unprecedented.

Florida has a statute which forbids a newspaper from charging a candidate for political advertising "a rate in excess of the local rate regularly charged". F.S. §104.372. Also, under that statute the newspaper may not charge one candidate more than it charges another. A New Hampshire statute similar to F.S. 104.372 was specifically upheld by the New Hampshire Supreme Court which refused to rule that regulation of the rates a newspaper could charge for advertising space was a violation of the First Amendment. See *Chronicle Publishing Co & Gazette v. Attorney General*, 94 N.H. 148, 48 A.2d 478 (1946).

The legislation described above strives to equalize the position of political advertisers vis-a-vis commercial advertising. F.S. §104.38 tries to equalize a daily newspaper's inherent advantage (in this era of one or two newspaper cities) over the political candidates it dislikes. Both types of legislation (non-discriminatory political advertising rate statutes and right of reply statutes) fulfill rather than offend the First Amendment interest in keeping the political process well ventilated.

Another indication that the Florida right of reply statute is not the bizarre anomaly painted by respondent is that one state retraction statute requires the newspaper, upon receipt of demand for correction, to print an adverse party statement *without cost* to him or his representatives. See Ohio Rev. Code Ann. §§ 2739.13 and 2739.14 (1972) concerning correction in the press of false statements previously published.

But the basic factor in evaluating the validity of the free space requirement of a right of reply law is that the concept of private property as an absolute limitation on free expression is not supported by the First Amendment decision of this Court. In *Amalgamated Food Employees, Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), the Supreme Court held that the picketers in that case had a First Amendment right to enter a privately owned shopping center. The Supreme Court refused to permit the defense of private property to shield the use of shopping centers from the exercise of First Amendment rights. In the metropolitan areas that surround our cities, many suburbs lack media facilities specifically serving the local communities. The mass media facilities that serve the whole metropolitan area, on the other hand, sometimes find the problems that beset a specific suburb or neighborhood not of sufficient interest or concern to warrant giving them coverage. Access for communication purposes to the shopping center in the suburban areas of American cities was, therefore, recognized as indispensable in some circumstances.

Mr. Justice Marshall in the *Logan Valley* case said there were some circumstances where "property that is privately owned may, at least for First Amendment purposes, be treated as though it were publicly held." *Id.* 316. The following analysis has been extended to *Logan Valley:*

> "Access to property for purposes of communication is therefore not dependent on whether 'it is ordinarily open to the public.' The underlying concept seems to be that when property is open to the public for every purpose except the pres-

> entation of views unwelcome to the owners, it should be open to the public for that purpose also. This dedication-to-public-use theory has been applied to public property. The remarkable and pioneering feature of the *Logan Valley Plaza* decision is that the Supreme Court applied this theory to private property also." Barron, FREEDOM OF THE PRESS FOR WHOM? THE RIGHT OF ACCESS TO THE MASS MEDIA (Indiana University Press, 1973) 103.

Since the rendition of the decision in *Logan Valley*, the Supreme Court had decided another shopping center case, *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972). In that case, the shopping center, the Lloyd Center in Portland, Oregon, sought to keep out members of an anti-war group who were distributing handbills. The center contended that the Fifth Amendment's prohibition against deprivation of "property . . . without due process of law" would be offended if groups could enter the shopping center to disseminate their views of the owners of the center did not wish to admit them. Although the two federal lower courts had supported the anti-war group's First Amendment claim for entry to the Lloyd Center, the Supreme Court reversed and upheld the property claim of the shopping center owners.

Lloyd Corp. v. Tanner, supra, does not repudiate past decisions. *Lloyd* merely insists on a relationship between the site of the protest and the object of the protest. The anti-Vietnam War activities of the group seeking entry to the Lloyd Center were deemed unrelated to the center in *Lloyd*. Is there a relationship between the object of the protest, the reply to the *Miami Herald*'s editorial attack

on Pat Tornillo, and the site of the protest, the *Miami Herald*? To raise the question is to answer it. Plaintiff Tornillo was replying to an attack on him in editorials by the newspaper in which he seeks to reply. The direct relationship of his response to the newspaper's attack could hardly be more intimate.

It is no more unconstitutional for appellant to be required to give free space to implement First Amendment objectives of debate than it was deemed unconstitutional to rule that privately owned shopping centers may be used for the exercise of First Amendment rights against the wishes of their owners.

It was never suggested in the shopping center cases that payment had to be rendered for the appropriate exercise of First Amendment rights on private property. The suggestion is particularly frivolous with regard to the enforcement of a statutorily recognized right of reply in a situation where the attack invited response.

Early precedents of this Court have not failed to subordinate claims of property to claims of First Amendment right. Only recently this Court, per Mr. Justice Powell in *Lloyd Corp. v. Tanner*, *supra*, pointed out the vital dependence of the *Logan Valley* holding to the doctrine set forth in *Marsh v. Alabama*, 326 U.S. 501 (1946). In *Marsh*, this Court refused to allow the fact that a corporation owned an entire town to legitimize the denial of First Amendment rights in that town. *Marsh* and *Logan Valley* share a common premise: private property is not off-limits to the exercise of First Amendment rights if entry to such property is the only way that those right can be meaningfully exercised. The conferral of a right of

reply on Tornillo and a duty to publish that reply on the *Miami Herald* by F.S. §104.38, the Florida right of reply statute, is completely authorized by the *Marsh-Logan Valley* concept that First Amendment rights are meaningless if their exercise is to be chilled by an incantation: "private property."

If there are only one or two daily newspapers in a community, ownership of them by a publisher must not, and does not, mean that the publisher has absolute dominion over every inch of space within them. If the publisher opens up his pages to abuse a political candidate, surely it is a strange conception of debate or of free expression which would hold that the Legislature is powerless to prevent such a publisher from keeping the political opposition in his community forever mute.

Right of reply statutes do not deprive appellant of property without due process but instead meet a deeply felt need of political candidates for fair debate and reply in the press. Right of reply statutes are badly needed relief designed to provide a forum for dialogue in this bitter and unhappy time.

VI.

THIS COURT DOES NOT LACK JURISDICTION TO REVIEW THE INTERMEDIATE DECISION BELOW, BECAUSE REMAINING ISSUES ARE MORE COLORABLE THAN REAL; AND THE ALTERNATIVE WOULD CONSTITUTE A SERIOUS DETRIMENT TO THE PUBLIC'S FREEDOM OF SPEECH

The *Miami Herald* asserts that if the Florida Supreme Court is "sustained" there will be a "need to return to the trial court for a determination of factual and state law issues." (Appellant's Brief, p. 38, footnote 87). What constitutes these factual and state law issues is unknown, since the only pleading ever filed in this case has been the Appellee's Complaint, which was summarily dismissed by the trial court.

The *Herald's* "hypothetical, horrible possibilities", developed in its brief to emphasize the alleged vagueness of the statute (§104.38), seem to suggest a number of defenses, that if successful, would, on remand and on subsequent trial, constitute separate and adequate state grounds for decision in its favor. Thus, the decision of the Supreme Court of Florida is clearly "intermediate" and under these conditions, the appellee has been obliged to submit that the decision of the Court below was not final for purposes of 28 U.S.C. §1257.

In his response to the jurisdictional statement, the Appellee called upon the *Miami Herald* to concede non-constitutional defenses, and thereby establish 28 U.S.C. §1257 "finality"; *Mills v. Alabama*, 384 U.S. 214 (1966).

The *Miami Herald* pointedly refrained from doing so—relying, rather, upon the *concurring* opinion of Mr. Justice Douglas in *Mills, supra* at 221, wherein it was stated:

> "Indeed, even had Appellant been unwilling to concede that he has no defense—apart from the constitutional question—to the charges against him, we would be warranted in reviewing this case. That result follows *a fortiori* from our holdings that where First Amendment rights are jeopardized by a state prosecution which, by its very nature, threatens to deter others from exercising their First Amendment rights, a federal court will take the extraordinary step of enjoining the state prosecution."

Because of the *Herald*'s truculence, we have examined their potential "factual and state law issues" and (perhaps wishfully) find them to be tenuous and fanciful at best. Civil relief in this cause will of necessity be granted under F.S. §104.38 (if it is found to be constitutional by this Court) on remand and trial if: (1) A newspaper (2) in its columns (3) assails the personal character (4) of any candidate (5) who demands a response in equal or less space than the attack; (6) and the newspaper refuses.

Tornillo feels that each of the foregoing has already been established, despite the absence of honorable concession. (1) The *Miami Herald* is a newspaper. (2) The vehicle of attack was an editorial column and not a news story or syndicated column, etc. (3) The Florida Supreme Court has characterized, and it is the law of this case, that the nature of the attack on Tornillo was such as to assail his personal character. (4) Tornillo was a candidate for public office. (5) Tornillo demanded a reply

that did not exceed the maximum statutory length. (6) Publication of the reply was refused by the *Miami Herald*.

Under these circumstances, there does not appear to be any real issue — other than the constitutional question presented by this appeal.

In *North Dakota State Bd. of Pharmacy v. Snyder Drug Stores, Inc.*, ____ U.S. ____, 42 U.S. L.W. 4035, 4036 (1973), this Court stated:

> "The finality requirement of 28 U.S.C. §1257 which limits our review of state court judgments serves several ends: (1) it avoids piecemeal review by federal courts of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal instrusion in state affairs."

None of these purposes will be violated, if Tornillo assumes the risk that he can prove, or at least survive the trial of, the foregoing issues. Under that assumption there will not be piecemeal review by federal courts of state court decisions; there will be no advisory opinion; there will be no undue intrusion into the affairs of the State of Florida, more properly left to state tribunals.

Even were that not to be the case, this is a cause in which an intermediate ruling—if not disposed of with dispatch, can carry serious public consequences. Right of access to the printed press is an idea whose time has come. As noted in the Appellant's Brief, p. 40, Senator McClellan

has already urged upon the Congress the wisdom of a national right of reply law—presumably similar in some respects to the Florida Statute under review. Just this month, President Nixon has delivered a strong message to the Congress, urging the enactment of a law permitting access to the press as a means of guaranteeing the presentation of both sides of public issues to the American public. While the parameters of such legislation is unknown, this case will obviously have some effect on the existence and scope of such bills. The failure by this Court, to decide this case at this time will create another and unnecessary national quandary.

If the foregoing is speculative, the Florida situation is not. The constitutionality of Florida's law has already been determined for this State. In the forthcoming fall elections in this State, Tornillo and other persons will be running for office at the legislative, executive and judicial levels. Tornillo and many of these persons will again be assailed by newspaper publishers—some intent upon the public good, and others intent upon securing the election of persons friendly to their own interests. In the absence of a ruling from the Supreme Court of the United States, it is reasonable to expect that F.S. §104.38 will be disobeyed. Replies to personal attacks will continue to be wastebasketed; perhaps more so than in the past, since the publishers will now be especially intent on proving their "independence" in the name of the preservation of the freedom for the press. Their excuse will be the absence of a final decision by the Supreme Court of the United States.

But it will be the freedom of speech of the assailed candidates that will suffer. They will be denied their responses in the press; and they will thereby be denied

their audiences. To deny an audience to a speaker is as much a denial of freedom of speech as if he had been physically gagged. Both are reprehensible to First Amendment guarantees of freedom of speech.

Most important, the people of Florida will be denied open debate during a critical election period. The people will be the ultimate losers if this Court fails to give an early decision on the validity of F.S. §104.38—Florida's right to reply law.

In *North Dakota State Bd. of Pharmacy, supra*, a unanimous court accepted jurisdiction over an admittedly intermediate decision, in the absence of technical finality, because, under certain circumstances, "this concept of finality has a 'penumbral area' ". In other words, where First Amendment freedoms suffer, and other national policy considerations hang in balance, reasonable exceptions to the finality rule of 28 U.S.C. §1257 exist and are utilized.

We reluctantly submit (that while Tornillo may, if victorious, still have to face the uncertainties of a state court proceeding) the critical First Amendment issues of this case are "final" and ripe for decision. Not only Florida, but all of the United States awaits and needs this decision. Only then can the citizens of the United States, upon receiving rights of reply in the press, be guaranteed the full measure of their First Amendment freedoms of speech. Only then will it be known that freedom of the press is something more than freedom for the publishers of the press.

For this reason, and to the extent that we are able, the appellee urges the acceptance of jurisdiction of this cause.

CONCLUSION

For the reasons aforesaid, the appellee, Pat L. Tornillo, Jr., urges this Court to accept jurisdiction of the cause, and to affirm the decision of the Supreme Court of Florida, upholding the validity of Florida's right to reply law—F.S. §104.38.

Respectfully submitted.

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PROOF OF SERVICE

I, JEROME A. BARRON, as a member of the Bar of the Supreme Court of the United States, do hereby certify that three true and correct copies of the Appellee's Brief were mailed by United States Mail, this ___ day of March, 1974, to PAUL & THOMSON, Attorneys for Appellant, 1300 First National Bank Building, Miami, Florida 33131; and also by U.S. Air Mail this same date to COHN & MARKS, 1920 L Street, N.W., Washington, D.C. 20036.

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Supreme Court
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MICHAEL RODAK,

In the Supreme Court of the United States

No. 73-797

THE MIAMI HERALD PUBLISHING COMPANY,
a division of
KNIGHT NEWSPAPERS, INC.,
Appellant,

vs.

PAT L. TORNILLO, JR.,
Appellee.

On Appeal from the Supreme Court of Florida

APPENDIX TO BRIEF OF APPELLEE

Statutory Regulation of Printed Media

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TABLE I

	II Pd. Pol. Adv.	III Anon. Pub.	IV Leg. Pub.	V Lotteries	VI Poll. Places	VII Divorce	VIII Retraction	IX Sex	X Boycott
ALABAMA	X	X	X				X	X	X
ALASKA		X							
ARIZONA					X	X		X	
ARKANSAS	X	X	X		X				
CALIFORNIA		X		X	X		X	X	
COLORADO		X	X	X				X	X
CONNECTICUT							X	X	
DELAWARE							X	X	
D. C.									
FLORIDA	X	X	X	X	X		X	X	
GEORGIA							X		
HAWAII									
IDAHO			X		X			X	
ILLINOIS		X	X			X			
INDIANA			X	X	X	X	X		
IOWA		X	X	X	X		X		
KANSAS			X						
KENTUCKY	X	X			X		X		
LOUISIANA		X			X				
MAINE		X			X		X	X	
MARYLAND				X				X	
MASSACHUSETTS	X	X				X	X	X	
MICHIGAN	X			X			X	X	
MINNESOTA	X	X	X		X	X	X		
MISSISSIPPI		X		X					
MISSOURI	X			X	X				

TABLE I (cont.)

	II Pd. Pol. Adv.	III Anon. Pub.	IV Leg. Pub.	V Lotteries	VI Poll. Places	VII Divorce	VIII Retraction	IX Sex	X Boycott
MONTANA	X	X					X	X	
NEBRASKA		X	X	X			X	X	
NEVADA			X		X			X	
NEW HAMPSHIRE		X			X				
NEW JERSEY		X	X				X	X	
NEW MEXICO			X		X				
NEW YORK		X	X		X	X			
NORTH CAROLINA			X	X	X		X		
NORTH DAKOTA	X	X	X	X	X		X	X	
OHIO	X	X	X				X		
OKLAHOMA		X	X	X			X		
OREGON	X	X	X				X	X	
PENNSYLVANIA		X	X					X	
RHODE ISLAND		X						X	
SOUTH CAROLINA	X		X	X	X	X		X	
SOUTH DAKOTA			X		X		X		
TENNESSEE		X							
TEXAS	X	X	X		X		X	X	
UTAH	X	X		X			X	X	
VERMONT		X		X				X	
VIRGINIA	X	X	X		X	X	X	X	
WASHINGTON		X	X	X	X	X		X	
WEST VIRGINIA	X	X	X		X	X	X	X	
WISCONSIN	X	X	X		X		X	X	
WYOMING								X	

TABLE II

STATUTES REQUIRING DENOMINATION OF "PAID POLITICAL ADVERTISEMENTS"

Alabama

Ala. Stat. T.17, §283. (597). Paid advertisement shall be marked as paid advertisement. — All political advertisements appearing in a newspaper shall be marked paid advertisement. Any person who publishes or circulates any campaign literature or political advertisement without the same bearing on its face the name and address of the person or committee causing the same to be published, or any person or the owner of any newspaper who publishes a political advertisement in a newspaper without the same being marked paid advertisement, is guilty of a corrupt practice.

Ala. Stat. T.14, §212. (4134). Advertisements in newspapers and magazines shall be so marked.— If any person, firm, corporation or association, or agent or employee thereof publishes in any newspaper, magazine, or other periodical, any advertisement not clearly marked or labeled "advertisement" at the beginning or end of said advertisement, such person, firm, corporation or association, or agent or employee thereof, shall be guilty of a misdemeanor, punishable as provided in section 211 of this title; but this section shall not apply to advertisements wherein the name of the maker, manufacturer, agent, distributor or salesman of the article or thing advertised, together with the address of said maker, manufacturer, agent, distributor or salesman, is plainly set out in said advertisement.

Arkansas

Ark. Stat. §3-1306. Paid articles in newspaper to contain word "advertisement."—All articles, statements or communications appearing in any newspaper printed or circulated in this State, intended or calculated to influence the vote or any elector in any primary election, and for the publication of which a consideration is paid, or to be paid, to the proprietor or publisher of such newspaper, shall be preceded or followed by the word "Advertisement" in conspicuous letters. [Acts 1913, No. 308, §7, p. 1252; C. & M. Dig., §3901; Pope's Dig., §4896.]

Fla. Stat. §104.37. Political literature, circulated prior to election; requirements.—

(1) All political advertisements and all campaign literature published or circulated prior to or on the day of any election shall be signed by the author thereof, and if the same is being published and circulated by a club or committee, then it shall be signed by the chairman and secretary of such club or committee, and if such literature is in circular form it shall have upon it the name of the printer or publisher. All political advertisements shall be marked "paid political advertisements paid for by .....
....."

(2) All printed political advertisements of candidates running for office in general elections shall bear the name of the political party with which the candidate is affiliated. This provision is intended to be broad in scope and shall include all media such as posters, signs, billboards, cards, circulars, letters, newspaper and magazine advertisements and any other form of advertising. Any circular,

printed material, etc., endorsing or using the name of the candidate, shall expressly set forth in comparable printing whether the permission of the candidate has been obtained permitting this printing.

(3) When any candidate running for office in a general election uses the media of radio or television, it shall be distinctly announced in such broadcasts or telecasts, the name of the political party with which such candidate is affiliated.

(4) It shall be unlawful for any person to publish any circular, advertisement, list of candidates names, or other form of announcement to the public in which the name of any other candidate, group, or organization, is used in support of his candidacy unless prior to such publication the candidate shall have given his specific approval to make such publication. Provided that this section shall not apply to:

(a) Editorial endorsement by any newspaper, radio, or television station or other recognized news media.

(b) Publication by a party committee advocating the candidacy of its nominees.

(c) Publication of sample ballots or partial sample ballots provided that such ballots contain the name of all candidates in their proper order of the races therein mentioned, if a partial ballot contains all races without omission from the top of the ballot to and including the last race shown thereon, and show no indication of preference or recommendation in regard to a candidate shown thereon without his prior specific consent.

(5) Any person who willfully violates the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083. the author thereof. Laws 1959, c. 675, Art. XII, §3.

Kentucky

Ky Stat. §123.095

(2) All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to support or defeat a candidate shall be signed or identified by the words "paid for by" followed by the name and address of the committee and the treasurer on whose behalf the communication appears. For television and radio broadcasts compliance with Federal Communications Commission regulations regarding sponsored programs and broadcasts by candidates for public office shall be considered compliance with this subsection. (1968 S. 280. Eff. 6-13-68. 1966 c. 216, §10)

Massachusetts

Mass. Stat. 56, §39. Publishing unsigned political advertisements; marking advertisements.— No person shall publish or cause to be published in a newspaper or other periodical, either in its advertising or reading columns, any paid matter designed or tending to aid, injure, or defeat any candidate for public office or any question submitted to the voters, unless the name of the chairman or secretary or the names of two officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street and number thereof, if any, appear therein

in the nature of a signature. Such matter inserted in reading columns shall be preceded or followed by the word "Advertisement" in a separate line, in type not smaller than that of the body type of the newspaper or other periodical. This section shall not authorize expenditures otherwise prohibited by this chapter.

Any corporation violating any provision of this section or section thirty-eight, relative to payments to newspapers and periodicals, and to political advertising, shall be punished by a fine of not more than ten thousand dollars, and any officer, director or agent of a corporation violating any such provision, who authorized such violation, or any person who violates, or in any way knowingly aids or abets the violation of, any such provision, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year. Added St. 1946, c. 537, §11.

Michigan

Mich. Stat. §168.914. Newspaper advertising marked; payment for editorials.— Sec. 914. No publisher of a newspaper or other periodical and no director or person responsible for the operation of any other advertising medium shall insert, either in its advertising or reading columns or cause or permit to be disseminated any paid matter which is designed or tends to aid, injure or defeat any candidate or political party or organization, or proposition before the people, unless it is stated therein that it is a paid advertisement. No person shall pay the owner, editor, publisher or agent of any newspaper, periodical or other advertising medium to induce him to editorially advocate or oppose any candidate for nomination or elec-

tion, and no such owner, editor, publisher or agent shall accept such payment. P.A. 1954, No. 116, §914, Eff. June 1, 1955.

Mich. Stat. §168.914a. Paid advertisements as to proposals, naming of sponsors.— Sec. 914a. No publisher of a newspaper or other periodical and no director or person responsible for the operation of any other advertising medium shall insert, either in his advertising or reading columns, or cause or permit to be disseminated, any paid matter which is designed or tends to support or oppose any proposed amendment or amendments to the constitution of this state, or proposition before the people, unless it is stated therein that it is a paid advertisement, and stating the name or names of the persons, organization or organizations paying for such advertisement. P.A. 1954, No. 116, §914a, added by P.A. 1955, No. 192, §1, Eff. Oct. 14, 1955.

Minnesota

Minn. Stat. §211.03. Paid advertisements in newspapers.— No publisher of a newspaper, periodical, or magazine shall insert either in the advertising columns of such newspaper, magazine, or periodical, or elsewhere therein, any matter paid or to be paid for which in intended or tends to influence directly or indirectly any voting at any primary or general election unless at the head of the matter is printed in pica capital letters the words "Paid Advertisement," and unless there is a statement at the head of the matter of the amount paid or to be paid therefor, or a statement that the same is to be paid at regular advertising rates, the name and address of the candidate in whose behalf the matter is inserted and of any other per-

son, if any, authorizing the publication and the name of the author thereof. Laws 1959, c. 675, art. XII, §3.

Missouri

Mo. Stat. T.9, §122.580. Newspaper articles to be marked paid advertisement.— No owner, proprietor, publisher, manager or lessee of any newspaper shall publish or print, or cause to be published or printed, any article, in any newspaper, in advocacy of or in opposition to the candidacy of a candidate for an elective office, which article is paid for, either directly or indirectly, unless such article be conspicuously marked "paid advertisement". No candidate for elective office shall publish or print, or cause to be published or printed, in any newspaper, any article in advocacy of his candidacy or in opposition to an advocacy of the candidacy of any other candidate for an elective office, which article is paid for, either directly or indirectly, unless such article be conspicuously marked "paid advertisement". (R.S. 1939, §6693)

Montana

Mont. Stat. §94-1452. (10798) Publications in newspapers and periodicals.— No publisher of a newspaper or other periodical shall insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure, or defeat any candidate or any political party or organization, or measure before the people, unless it is stated therein that it is a paid advertisement, the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street

number thereof, if any, appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher, or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent shall accept such payment. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice.

North Dakota

N. D. Stat. §16-20-17. Political advertising to be labeled paid.—No publisher of a newspaper or other periodical shall insert either in its advertising or reading columns any paid matter which is designed, or which tends, to aid, injure, or defeat any candidate, political party, organization, or measure before the people, unless it is stated therein that it is a paid advertisement.

Ohio

Ohio Stat. §3599.08. Influencing candidates and voters by publications. (GC §4785-197)

No owner, editor, writer, or employee of any newspaper, magazine, or other publication of any description, whether published regularly or irregularly, shall use the columns of any such publication for the printing of any threats, direct or implied, in the columns of any such publication for the purpose of controlling or intimidating candidates for public office. Such person shall not directly or indirectly solicit, receive, or accept any payment, promise, or compensation for influencing or attempting to influence votes through any printed matter, except through

matter inserted in such publication as "paid advertisement" and so designated.

Whoever violates this section is guilty of a corrupt practice and shall be fined not less than five hundred nor more than one thousand dollars.

Oregon

Ore. Stat. §260.512. Identification of paid political matter published in periodicals; payments for editorial advocacy or opposition.

(1) No publisher of a newspaper or other periodical shall insert, either in its advertising or reading columns, any paid matter that is designed or tends to aid, injure or defeat any candidate, political party or political committee or any measure submitted to the people, unless it is stated therein that it is a paid advertisement. There shall also appear, in the nature of a signature to the advertisement, the name of the person inserting it, with his residence address. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election or any measure submitted to the people. No such owner, editor, publisher or agent shall receive such payment.

(2) Violation of this section is a misdemeanor.

South Carolina

S. C. Stat. Ch. 6, §47-573. Candidacy for office; newspaper commendations.— No member of the council

or of the civil service commission of any such city shall hold or be a candidate for any other office without first resigning or at once forfeiting such office in the city government. No officer or candidate in connection with the city government shall directly or indirectly pay for any publication in any newspaper in commendation of his services or in advocacy of his candidacy or in respect thereto or against any other candidate, except under the caption "paid advertisement," and no person publishing or managing a newspaper shall publish for a consideration any commendation, advocacy or condemnation of any officer or candidate for office of such city without stating in such publication the price paid therefor and the person paying it. Any violation of any of these provisions shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year. (1952 Code §47-573; 1942 Code §§7653, 7673; 1932 Code §§7653, 7673; Civ. C. '22 §4746; Cr. C. '22§529; Civ. C. '12 §3089; 1910 (26) 523; 1929 (36) 154.)

Texas

Tex. Stat. Art. 211, §236. Political advertising. Anything published in newspapers, pamphlet or printed journal in favor of or in opposition to any candidate for any public office or in favor of or in opposition to the success of any public officer, or in favor of any political party, or any proposition submitted to a vote of the people, when the same is published in consideration of the receipt or promise of money or thing of value, shall be known as political advertising. And no such advertisement shall be accepted for publication or printing unless it is signed by the responsible chairman of any candidate's committee, or any candidate himself, political committee, or by the

chairman or representative of any commercial or other organization, or by the individual responsible for its publication, and such signature shall appear in the advertisement as printed. All advertisements of marked ballots, advising or suggesting how voters should mark their ballots shall be included in the meaning of this Article; and any editor, publisher, manager or agent of any newspaper, pamphlet or printed journal who shall publish political advertising other than as advertising matter, which shall be labeled at the beginning or end thereof with the word "advertisement," or who shall wilfully demand or receive for the publication of such political advertising money or other thing of value in excess of the sum due for such service at the regular advertising rates of such newspaper, pamphlet or printed journal, or any person who shall pay, or offer to pay the editor, publisher, manager or agent of any newspaper, pamphlet or printed journal for such service any money or thing of value in excess of the sum due at regular advertising rates, or any person who shall pay or offer to pay any editor, publisher, manager or agent of a newspaper, pamphlet or printed journal any money or thing of value for the publication of political advertising, except as advertising matter, shall be fined not less than Five Hundred Dollars ($500) nor more than One Thousand Dollars ($1,000), or be imprisoned in jail not less than ten (10) nor more than thirty (30) days. Nothing herein shall be construed as applying to announcements of candidates for office. Acts 1905, p. 560, §167; Acts 1935, 44th Leg., p. 709, ch. 304, §1.

Tex. Stat. Ch. 3, Art. 212a. Political advertising, regulations concerning.—Section 1. No newspaper, magazine, or other publication, published daily, biweekly, weekly, monthly, or at other intervals shall sell, solicit, bargain

for, offer, or accept for money, other consideration, or favors, any kind or manner of political advertising from more than one candidate for any or all local, county, State, or Federal offices, unless such publication shall have been published and distributed generally for at least twelve (12) months next preceding the acceptance of the advertising.

Utah

Utah Stat. §20-14-27. Paid advertisements permitted.— No owner, publisher, editor, reporter, agent or employee of any newspaper or other periodical shall, directly or indirectly, solicit, receive or accept any payment, promise or compensation, nor shall any person pay or promise to pay or in any manner compensate any such owner, publisher, editor, reporter, agent or employee, directly or indirectly, for influencing or attempting to influence by means of any printed matter in such newspaper any voting at any election or primary through any means whatsoever, except through the matter inserted in such newspaper or periodical as "paid advertisement" and so designated as provided by law, and the compensation for inserting any such paid advertisement shall in no case exceed the regular rate charged by such newspaper or periodical for such service.

Virginia

Va. Stat. §24.1-276. Publications not to receive compensation for advocating candidacy.— It shall be unlawful for any owner, proprietor, editor, manager, officer, clerk, agent, reporter, or employee of any newspaper, magazine, or periodical printed or published in this Commonwealth

to take, accept or receive, or agree to take, accept or receive, for himself or any other person, firm or corporation, either by himself or any other person or persons, firm or corporation, any money or other valuable consideration for such newspaper, magazine, or other periodical supporting or advocating the election or defeat of any candidate or candidates at any election. Any such owner, proprietor, editor, manager, officer, clerk, agent, reporter, or employee of any newspaper, magazine or other periodical violating the provisions of this section shall be deemed guilty of a misdemeanor. But nothing in this section shall prevent any person or persons, firm or corporation engaged in the publication of any newspaper, magazine or periodical from receiving from any person for publication and publishing any matter, article or articles advocating the election or defeat of any candidate or candidates and receiving from such person a compensation therefor, if such articles so published or printed have placed at the beginning thereof in plain type in black face Roman capitals in a conspicuous place the statement "Paid Advertisement" and comply with the provisions of §24.1-277. (Code 1950 (Repl. Vol. 1969), §24-406; 1952, c. 4; 1970, c. 462.)

West Virginia

W. Va. Stat. §3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;

(a) No person shall publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, or other publication tending to influence voting at any election;

(b) No owner, publisher, editor, or employee of a newspaper or other periodical shall insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election whatever, unless distinctly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published;

Wisconsin

Wisc. Stat. §12.14. Campaign matter or political advertisements.

(1) (a) No publisher of a newspaper or other periodical shall publish, either in the advertising column of such newspaper or periodical or elsewhere therein, any matter paid for or to be paid for which is intended or tends to influence, directly or indirectly, any voting at any election or primary, unless at the head of said printed matter is printed the words "Advertisement To Be Paid For" or "Paid Advertisement," as the case is, and the name, given and surname, and address of the candidate in whose behalf the matter is inserted, and of any other person, if any, authorizing the publication and the name, given and surname, of the author thereof.

TABLE III

ANONYMOUS PUBLICATIONS

Alabama

Ala. Stat. T.17 §282. (596) Bills, placards, advertisements, etc., must bear name of committee.—Every bill,

placard, poster, pamphlet, advertisement, newspaper advertisement, cartoon, or other printed matter, having reference to an election, or to any candidate, shall bear upon the face thereof the name and address of the person or committee causing the same to be published. The failure to place thereon the name and address of such person or committee, or the printing or publishing, or circulating of any such printed matter without the same bearing upon the face thereof the name and address of such person or committee, is a corrupt practice.

Ala. Stat. T.17 §284. (598) Cartoons shall bear name of newspaper or executive officer of corporation.—Every cartoon having reference to an election or to any candidate or to any proposition to be submitted to a popular or party vote or to a vote of the legislature of Alabama, shall, if published in any newspaper and not caused to be published therein by some person or committee, bear upon the face thereof the name of the owner or publisher of such newspaper, and if such newspaper is owned or published by a corporation, the name of the principal executive officer of such corporation.

Alaska

Alaska Stat. Sec. 15.55.030. Publication without identification.—A person who knowingly prints or circulates, or has written, printed, or circulated, a letter, circular, bill, placard, poster, or other publication relating to an election or to a candidate at an election or to an election proposition or question without the same bearing on its face, the name and address of the author, printer, and publisher, is guilty of a corrupt practice and upon conviction is punishable as for a misdemeanor. (§11.04 ch. 83 SLA 1960)

Arkansas

Ark. Stat. 3-1412. Publication of political statements or pamphlets without signature unlawful.—No statement, communication, and/or advertisement of a political nature, may be published in a newspaper or other periodical within the State of Arkansas; and no circular, pamphlet, letter, form letter, statement, advertisement, and/or other similar matter of a political nature, may be printed or distributed in this State, unless such statement, communication, advertisement, circular, pamphlet, form letter, mimeographed, printed, duplicated, and/or other similar matter, plainly bears the name or names and post office addresses of the individuals, firms, committees, or other group or groups, sponsoring and bearing the cost of same. If the sponsors thereof be not the same persons, groups, committees, or organizations, bearing the cost thereof, then the names of both the sponsor and those bearing the cost, shall plainly appear upon such advertising matter; and if the sponsor, or sponsors, and/or those bearing the cost thereof, are a group, committee, association, council, or other body, then the names of the three principal officers of such sponsoring and/or paying groups, committees, association, councils, or other bodies, together with the correct post office address of each, shall also be printed thereon. (Acts 1945, No. 261, §1, p. 601.)

California

Cal. Stat. Art. 2 §12047. Unidentified circulars, pamphlets or posters.—Every person is guilty of a misdemeanor who writes or causes to be written, printed, posted, or distributed any circular, pamphlet, letter, or poster which is designed to injure or defeat any candidate

for nomination or election to any public office by reflecting upon his personal character or political action, unless there appears upon the circular, pamphlet, letter, or poster, in a conspicuous place, the name and address of the printer and either:

(a) The name and address of the chairman and secretary or the names and addresses of at least two officers of the political or other organization issuing it; or

(b) The name and residence address, with the street and number, if any, of some voter of this State, who is responsible for it.

Colorado

Colo. Stat. 49-21-50. Anonymous statements concerning candidates.—Any person who willfully publishes or distributes any card, pamphlet, circular, poster, dodger, advertisement, or other writing relating to or concerning any person who has publicly declared or has caused or permitted to be publicly declared his intention to seek election to any congressional, state, district, county, justice precinct, or precinct office in a primary, general, or special election or at a precinct caucus, assembly, or convention of a political party, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the name of the president, chairman, or responsible official of each such association, committee, or corporation, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 49-21-4(2). This section shall not apply to any person who, by himself or by his agent, publishes or distributes any writing relating to or concerning himself.

Florida

Fla. Stat. 836.03. Owner or editor of the paper also guilty.—Any owner, manager, publisher or editor of any newspaper or other publication who permits any anonymous communication or communications such as is signed otherwise than with the true name of the writer, and such name published therewith to appear in the columns of his publication in which said communication any person is attacked in his good name, or it is attempted to bring disgrace or ridicule upon any person, such owner, manager, publisher or editor shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083. Amended by Laws 1971, c. 71-136, §989, eff. Jan. 1, 1972.

Illinois

Ill. Stat., T.46, §26-1. Anonymous publications relative to candidacy.—It shall be unlawful for any person or group of persons, or any firm, organization, association, league or other body to publish, circulate or distribute any pamphlets, circular, handbill or other printed matter relative to the candidacy of any person or persons seeking nomination or election to any public office unless the same shall bear thereon in plain type the name and address of the person or persons; or the names and addresses of the officers of any firm, organization, association, league or other body causing such matter to be published and distributed and in the event that two or more persons join in causing said matter to be published and distributed then the names and addresses of each of such persons shall be imprinted thereon in plain type: Provided, that if more than ten persons shall join in publishing and distributing

such matter, then it shall be sufficient if the names and addresses of ten of such persons shall be imprinted thereon as aforesaid. And Provided, further, that it shall not be necessary for any domestic corporation, in good standing and organized at least one year prior to publishing such matter, to print as aforesaid more than its full corporate name and address and the name of its chief executive officer. 1943, May 11, Laws 1943, vol. 2, p. 1, §26-1.

Iowa

Iowa Stat. 738.22. Political advertisements.—Whoever writes, prints, posts, or distributes or causes to be written, printed, posted, or distributed, a circular, poster, or advertisement which is designed to promote the nomination or election of a candidate for public office or to injure and defeat the nomination or election of any candidate for public office, or to influence the voters on any constitutional amendment, or to influence the vote of any member of the legislature, unless there appears upon such circular or poster or advertisement, in a conspicuous place, either the name of the chairman or secretary or of two officers of the organization issuing the same, or of the person who is responsible therefor, with his name and address, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment.

Kentucky

Ky. Stat. 123.130. Regulation of printed matter relative to candidates for office.—

1. All written or printed circulars, advertisements or other statements with reference to any candidate or group of candidates for nomination or election to any public office in this Commonwealth shall include the signature and the address of the writer, or if the same purports to be issued by any committee, organization or other similar association, the same shall include the signatures and the addresses of two of the principal officers of the committee, organization, or association.

(1966 c 174 §2. Eff. 6-16-66)

2. Statements, articles or advertisements appearing in newspapers or magazines shall be signed by the writer and contain his address. The management of the newspaper or magazine shall keep a one year record of these signatures and addresses but shall publish this information only upon the discretion of the editor.

(1966 c 174, §2. Eff. 6-16-66)

Louisiana

La. Stat. RS 18, §1531. Identification of person or organization publishing or distributing statement concerning candidate; penalty.—No person shall publish or distribute or cause to be published or distributed any printed, multigraphed, photographed, mimeographed, typewritten, or written pamphlet, circular, card, dodger, poster, advertisement, or any other statement, relative to or concerning any candidate for election or nomination in any primary, general, or special election to any state, parochial, municipal, district, or ward office, unless it contains the name of the person responsible for its publication or distribution.

If an association, organization, committee, or corporation is responsible for the publication or distribution, there shall be included the full and correct names and addresses of all the officers and of its entire membership or shareholders.

Whoever wilfully violates this Section shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned, with or without hard labor, for not less than one year nor more than ten years, or both.

Maine

Me. Stat. 21, §1575. Identification of political advertisements.—The source of a written or oral advertisement which is designed to promote or defeat a candidate, party or principle must be identified by disclosing as part of the advertisement the name of the person or chairman of the organization which sponsored it.

Massachusetts

Mass. Stat. 56 §39. Publishing unsigned political advertisements; marking advertisements.—No person shall publish or cause to be published in a newspaper or other periodical, either in its advertising or reading columns, any paid matter designed or tending to aid, injure, or defeat any candidate for public office or any question submitted to the voters, unless the name of the chairman or secretary or the names of two officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street and number thereof, if any, appear therein in

the nature of a signature. Such matter inserted in reading columns shall be preceded or followed by the word "Advertisement" in a separate line, in type not smaller than that of the body type of the newspaper or other periodical. This section shall not authorize expenditures otherwise prohibited by this chapter.

Any corporation violating any provision of this section or section thirty-eight, relative to payments to newspapers and periodicals, and to political advertising, shall be punished by a fine of not more than ten thousand dollars, and any officer, director or agent of a corporation violating any such provision, who authorized such violation, or any person who violates, or in any way knowingly aids or abets the violation of, any such provision, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year.

Minnesota

Minn. Stat. 211.08. Campaign literature matter must include names.—Any person or committee who shall publish, issue, or circulate, or cause to be published, issued, or circulated, otherwise than in a newspaper, as provided in section 211.03, any literature or any publication tending to influence voting at any primary or election which fails to bear on the face thereof the name and address of the author, the name and address of the candidate in whose behalf the same is published, issued, or circulated, and the name and address of any other person or committee causing the same to be published, issued or circulated, and any person, firm, corporation or committee who shall knowingly make or publish or cause to be published, any false statement in relation to any candidate or proposition to be

voted upon, which statement is intended to or tends to affect any voting at any primary or election, shall be guilty of a misdemeanor; provided, nothing herein contained shall be construed as modifying or repealing any of the provisions of section 211.10. Laws 1959, c. 675, art. XII, §8.

Mississippi

Miss. Stat., T.11, §2287. Newspapers and periodicals to print names of their editors.—Newspapers and periodicals published in this state, for regular distribution through the mails or otherwise, shall print at the top of the editorial page of said publication the full name of its chief editor, the assistant editor, if any, or the person or persons directly responsible for the editorial utterances of said publication. The owner or owners of any newspaper or periodical published in this state in violation of this section, shall be guilty of a misdemeanor and upon conviction, shall be fined not more than twenty-five dollars for each offense.

Sources: Codes, Hemingway's 1917, §§1023, 1024; 1930, §1055; Laws, 1912, ch. 156.

Montana

Mont. Stat. 94-1475. Political literature to contain name of officer of organization or person publishing and producing.—It shall be unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document which is designed to aid, injure or defeat any candidate or any political party or organization or measure before the people unless it is stated therein the name of the chairman or

secretary, or the names of the other officers of the political or other organization publishing, printing, mimeographing, typing or otherwise producing such dodger, bill, handbill, pamphlet or other document or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or the producer thereof with his residence and street address, if any, or his place of business.

Nebraska

Neb. Stat. 32-1131. Campaign literature; circulation, printing, advertisement; identity of person printed thereon; violation; misdemeanor.—No person, persons, or committee shall print, publish, reproduce or distribute in quantity, nor order to be printed, published, reproduced or distributed by any method any photograph, handbill, pamphlet, advertisement, circular, post card, placard or letter, which contains any statement, notice, information, allegation or other material concerning any political party, candidate, committee, person, proposition or amendment to the state constitution or city charter whether in favor of or against a political party, candidate, committee, person, proposition, or amendment to the state constitution or city charter, in connection with any election including city, county, state, or national primary or general elections of public officers, party officials, candidates for nomination or election for public office, party position, proposition or amendment to the state constitution or city charter without also printing or reproducing thereon legibly the name of the person or committee at whose instance or request such photograph, handbill, pamphlet, advertisement, circular, post card, placard or letter is so printed, published, reproduced, or distributed, and of the persons who ordered

such printing, publishing reproduction or distribution, and no person or committee shall so print, publish, reproduce or distribute or order to be printed, published, reproduced or distributed any such photograph, handbill, pamphlet, circular, post card, placard or letter without also so printing, publishing or reproducing his or its name and residence address thereon including street address, city and state. In the case of an individual or individuals, the name and residence address of any individual responsible for it shall be given. In the case of a committee, the names and residence addresses of at least two committee officers residing in this state shall be given. A violation of the provisions of this section shall constitute a misdemeanor.

New Hampshire

N. H. Stat., 70:14. Political advertising.—All political advertising or literature, in newspapers or other periodicals, on radio or television, on billboards, window cards, circulars, pamphlets, or of whatever nature, shall be signed at the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the secretary of a political committee, or the name and address of a voter, according to whether a candidate, political committee, or voter is responsible for it. Said signature thereto shall clearly designate the name of the candidate, party or political committee by or on whose behalf the same is published or broadcast. In the case of printed or written matter, the said signature and address of signer shall be printed or written in a size of type or lettering large enough to be clearly legible.

1. Political advertising printed in newspapers, periodicals, or billboards shall be marked at the beginning

thereof "Political advertising". Persons or corporations operating a radio or television station shall broadcast political advertising only after announcing it as such.

New Jersey

N. J. Stat. 19:34-38-1. Printing and distribution of circulars, handbills, etc.; required statement.—No person shall print, copy, publish, exhibit, distribute or pay for the printing, copying, publishing, exhibiting or distribution or cause to be distributed in any manner or by any means, any circular, handbill, card, pamphlet, statement, advertisement or other printed matter having reference to any election or to any candidate or to the adoption or rejection of any public question at any general, primary for the general, or special election unless such circular, handbill, card, pamphlet, statement, advertisement or other printed matter shall bear upon its face a statement of the name and address of the person or persons causing the same to be printed, copied or published or of the name and address of the person or persons by whom the cost of the printing, copying, or publishing thereof has been or is to be defrayed and of the name and address of the person or persons by whom the same is printed, copied or published.

L. 1963, c. 57, §2, supplementing Title 19, c. 34.

New York

N. Y. Stat., Art. 21, § 330. Publication of owner's name.—1. Every newspaper, magazine or other periodically printed publication published in this state, shall publish in every copy of every issue, upon the editorial page or in one of the first four pages of the publication, the full name

and address of the owner, owners, proprietor or proprietors of such publication; and if said publication shall be owned or published by a corporation, then the name of the corporation and the address of its principal place of business shall be published, together with the full names and addresses of the president, secretary and treasurer thereof; and if the said publication shall be owned or published by a partnership, limited partnership, or an unincorporated joint stock association, then the full names and addresses of the partners, or officers and managers of said partnership, limited partnership or unincorporated joint stock association shall be published in like manner. The representative capacities of those named shall be indicated in like manner.

North Dakota

N.D. Stat. 16-20-17.1. Political advertisements to disclose name of sponsor.—Each and every political advertisement, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure or constitutional amendment, and whether such advertisement shall be by newspaper, pamphlet or folder, display cards, signs, posters or billboard advertisements, or by any other public means, shall disclose at the bottom of same the name or names of the sponsors of such advertisement, and the name or names of the person, persons, associations, partnerships or corporations paying for such advertisement, except however, this section shall not apply to campaign buttons. At the close of every radio or television broadcast containing any advertising announcements or talk for or against any candidate for public office, any initiated measure, referred measure or constitutional

amendment to be voted on by the people, there shall be announced at the close of said broadcast the name or names of the person, persons, associations, partnerships or corporations paying for such radio or television broadcast.

Ohio

Ohio Stat. 3599.09. Political communications must be identified; penalty.—(A) No person shall write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a notice, placard, dodger, advertisement, sample ballot, or any other form of publication which is designed to promote the nomination or election or defeat of a candidate, or to promote the adoption or defeat of any issue, or to influence the voters in any election, unless there appears on such form of publication in a conspicuous place or is contained within said statement, the name and residence address of the chairman or secretary of the organization issuing the same, or the person who issues, makes, or is responsible therefor, except that when such publication is issued by the regularly constituted central or executive committee of a political party, organized as provided in Chapter 3517. of the Revised Code, it shall be sufficiently identified if it bears the name of the committee and its chairman. No person, firm, or corporation shall knowlingly print or reproduce any notice, placard, dodger, advertisement, sample ballot, or any other form of publication in violation of this section.

A candidate shall not be required to place his address on literature promoting his own candidacy.

Oklahoma

Okla. Stat., T. 26, S 491. Anonymous election literature prohibited—Penalty.—Whoever, other than the candidate himself, writes, prints, posts or distributes or causes to be written, printed, posted or distributed a circular, poster, or advertisement which is designed to injure or oppose the nomination or election of a candidate for public office or to influence the voters on any constitutional or statutory amendment, or any other issue in a state, city, county, or school board election, or to influence the vote of any member of the Legislature, unless there appears upon such circular or poster or advertisement, in a conspicuous place, either the name and address of the person, if an individual, or the name and address of the president, chairman, and secretary, or of two (2) officers of the organization, if an organization, who placed the order for the advertising or had the printing done, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned in the county jail not to exceed thirty (30) days, or be punished by both such fine and imprisonment.

Oregon

Ore. Stat. 260.522. Identification of source of political publications.—

(1) No person shall print, publish, post or circulate or cause to be printed, published, posted or circulated through the mails or otherwise any letter, circular, bill, placard, poster or other publication relating to any election or to any candidate or measure at any election, unless it bears on its face the name and address of the publisher thereof.

(2) Violation of this section is a misdemeanor.

Pennsylvania

Pa. Stat. Ch. 3, T. 54, S 64. Names of owner and managing editor on editorial page; names of corporation and president; names of partners to be published.— Every newspaper published in this Commonwealth, whether published monthly, weekly, biweekly, semi-weekly, or daily, or whether such publication is at regular or irregular intervals, shall publish on the editorial page, in a conspicuous position, at the top of the reading matter the name of the owner or proprietor of such newspaper, together with the name of the managing editor thereof. If said newspaper is owned or published by a corporation, then the name of the corporation shall be published, together with the name of the president and managing editor thereof; and if the said newspaper is owned or published by a partnership, or partnerships limited, then the names of the partners and the managing editor shall be published in like manner. 1939, June 12, P. L. 336, S 1.

Rhode Island

R. I. Stat. 17-23.2. Signature of posters and circulars.— No person shall intentionally write, print, post or distribute, or cause to be written, printed, posted or distributed, a circular or poster designed or tending to injure or defeat any candidate for nomination or election to any public office, by criticizing his personal character or political action, or designed or tending to aid, injure or defeat any question submitted to the voters, unless there appears upon such circular or poster in a conspicuous place either the names of the chairman and secretary, or of two (2)

officers of the political or other organization issuing the same, or of some voter who is responsible therefor, with his name and residence, and the street and numbers thereof, if any.

Tennessee

Tenn. Stat. 39-5201. Publisher or person responsible to be named.—Penalty for violation.—The publication and distribution of any circular, poster, hand bill, newspaper, or magazine without the name of the publisher or person responsible for the contents being shown thereon is prohibited.

Any person who shall violate this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) or imprisoned in the county jail or workhouse for a period of not less than ten (10) days nor more than thirty (30) days, or both in the discretion of the judge.

Texas

Tex. Stat. Art. 211. 236. Political advertising.—Anything published in newspapers, pamphlet or printed journal in favor of or in opposition to any candidate for any public office or in favor of or in opposition to the success of any public officer, or in favor of any political party, or any proposition submitted to a vote of the people, when the same is published in consideration of the receipt or promise of money or thing of value, shall be known as political advertising. And no such advertisement shall be accepted for publication or printing unless it is signed by the responsible chairman of any candidate's committee, or

any candidate himself, political committee, or by the chairman or representative of any commercial or other organization, or by the individual responsible for its publication, and such signature shall appear in the advertisement as printed. All advertisements of marked ballots, advising or suggesting how voters should mark their ballots shall be included in the meaning of this Article; and any editor, publisher, manager or agent of any newspaper, pamphlet or printed journal who shall publish political advertising other than as advertising matter, which shall be labeled at the beginning or end thereof with the word "advertisement" or who shall wilfully demand or receive for the publication of such political advertising money or other thing of value in excess of the sum due for such service at the regular advertising rates of such newspaper, pamphlet or printed journal, or any person who shall pay, or offer to pay the editor, publisher, manager or agent of any newspaper, pamphlet or printed journal for such service any money or thing of value in excess of the sum due at regular advertising rate, or any person who shall pay or offer to pay any editor, publisher, manager or agent of a newspaper, pamphlet or printed journal any money or thing of value for the publication of political advertising, except as advertising matter, shall be fined not less than Five Hundred Dollars ($500) nor more than One Thousand Dollars ($1,000) or be imprisoned in jail not less than ten (10) nor more than thirty (30) days. Nothing herein shall be construed as applying to announcements of candidates for office.

Utah

Utah Stat. 20-14-24. Prohibitions as to publishers, newspapers and other periodicals.—No publisher of a news-

paper or other periodical circulating in this state shall insert, either in its advertising or reading columns, any paid matter which is designated or tends to aid, injure or defeat any candidate, or any political party or organization, or any measure before the people, unless it is stated therein that it is a paid advertisement and the name of the chairman or secretary or other officers of the political or other organizations inserting the same, or the name and address of some voter who is responsible therefor, shall appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to advocate or oppose editorially any candidate for nomination or election, and no such owner, editor, publisher or agent shall accept such payment.

Utah Stat. 20-14-25. Statement of ownership of publication.—No publisher of any newspaper or other periodical published within this state shall insert, either in its advertising or reading columns, any matter whatsoever of a political nature, or any political editorial relative to a candidate for any public office, unless the publisher thereof shall file in the office of the secretary of state, within three months before the holding of any nominating convention or primary or general election, or within ten days after the calling of and before the holding of any special election, a sworn statement which shall contain the names of the owners of such paper; and, if such publisher is a corporation, such statement shall be executed by some responsible officer thereof who is in a position to know the facts, and shall contain the names and address of the owners of the shares of stock and the bonds of such corporation.

Vermont

Vt. Stat., T. 17, § 2022. Printing or publication of anonymous political literature.—A person who writes, prints, publishes, posts or circulates or causes to be written, printed, published, posted or circulated through the mails or otherwise any letter, circular, bill, placard, poster or other publication relating to any election or to any candidate at any election, unless it bears on its face the name and address of the author and publisher thereof, shall be fined not more than $500.00. However, this section shall not apply to a candidate whose letter, circular, bill placard, poster or other publication identifies himself and promotes his own candidacy. 1963, No. 159.

Virginia

Va. Stat. 24.1-277. Writings concerning candidates for office to identify person responsible therefor.

1. As used in this section "writing" means any pamphlet, poster, card, circular, book, dodger, flyer, banner, handbill, picture, or any other written, printed or otherwise reproduced statement or advertisement of any class or description, but shall not include editorial comment or news coverage which is sponsored and financed by the news medium publishing or broadcasting it.

2. It shall be unlawful for any person to cause any writing other than a television or radio broadcast to appear concerning any candidate for any office elective by the qualified voters unless such writing plainly identifies the person responsible therefor and where the writing is caused by a candidate, carries the statement "by authority of

.....(name)....., duly designated Treasurer of .....(name of candidate)....."; or where the writing is not caused by a candidate, the person causing the writing shall be identified by full name and address on the writing. It shall be unlawful for any person to cause any radio or television statement to appear unless the advertisement or statement contains information which plainly identifies the person or group responsible therefor.

3. It shall be unlawful for any person to use a false or fictitious name or address on any such writing described in the preceding paragraph.

4. Any person violating any provision of this section shall be deemed guilty of a misdemeanor. (Code 1950 (Repl. Vol. 1969), § 24-456; 1956 c. 398; 1970, c. 462.)

Washington

Wash. Stat. 29.85.270. Political advertising—Use of assumed name.—All political advertising, whether relating to candidates or issues, however promulgated or disseminated, shall identify at least one of the sponsors thereof if the advertising is sponsored by other than the candidate or candidates listed thereon, by listing the name and address of the sponsor or sponsors on the material or in connection with its presentation. If a candidate or candidates run for partisan political office, they and their sponsors shall also designate on all such political advertising clearly in connection with each such candidate the party to which each such candidate belongs. The person or persons listed as sponsors of such advertising shall warrant its truth. The use of an assumed name shall be unlawful. Whenever any corporation sponsors political advertising,

the name and address of the president of the corporation shall be listed on the material or in connection with its presentation.

West Virginia

W. Va. Stat. 3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising.—

(a) No person shall publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placards, or other publication tending to influence voting at any election;

(b) No owner, publisher, editor, or employee of a newspaper or other periodical shall insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election whatever, unless distinctly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

Wisconsin

Wis. Stat. 12.16. Campaign literature must disclose author and candidate.—No person shall publish, issue or circulate or cause to be published, issued or circulated otherwise than in a newspaper, as provided in s. 12.14(1), any literature or any publication tending to influence voting at any election or primary, which fails to bear on the face thereof the given name, surname, and address of the author, the given name and surname of the candidate in whose behalf the same is published, issued or circulated,

and the given name, surname and address of any other person causing the same to be published, issued or circulated.

TABLE IV

STATUTES DEFINING RATES ON "LEGAL PUBLICATIONS"

Alabama

Ala. Stat. T.7 §718(2). Rates to be charged.—Newspapers of this state shall not charge, nor shall any agency required to cause publication to be made pay, more than two cents a word for the first insertion and one and one-half cents a word for each subsequent insertion; provided that the current published commercial rate may be contracted for when the publication is made in a daily newspaper. When any matter or material is required to be published in tabular form, the rate to be charged and paid shall not exceed the nationally published rate. (1953, p. 1087, §2, appvd. Sept. 19, 1953.)

Arkansas

Ark. Stat. §15-104. Rate.—When any law, proclamation, advertisement, order or notice shall be published in any newspaper for the State or for any officer on account of the State or for any county or for any officer on account of any county, or for any legal advertisement for any individual, except real property and personal property delinquent tax lists; there shall be allowed for such publication the following rates: For all matter other than tabular

matter, three cents [3c] per word for the first insertion and two cents [2c] per word for each subsequent insertion, with each separate group of numerals included in such matter to be counted as one [1] word, regardless of the number of digits involved. When tables or tabular matter are included each line of the standard newspaper column shall be considered as containing at least six [6] words. [Act Apr. 14, 1891, No. 157 §3, p. 269; C. & M. Dig., §6805; Acts 1929, No. 92, §1, p. 495; 1933, No. 66, §1, p. 191; Pope's Dig., §8774; Acts 1947, No. 123, §1, p. 295; 1955, No. 60, §1, p. 142.]

Colorado

Colo. Stat. §109-1-7. Rates for legal publications.—For the publication of all legal notices or advertisements required by law or the order of any court of record in this state to be published in newspapers, and including notices of sale for delinquent taxes, the publishers thereof shall be entitled to charge not in excess of eighteen cents for each single-column line of nonpareil, or smaller type, measure not less than ten pica ems wide, for the first insertion, and not in excess of fourteen cents per line for each subsequent insertion; provided, if the body of said notice shall be set in eight point or larger type that the charge for that portion of the notices shall be ten per cent less than if set in nonpareil and five per cent less if set in seven point type. All emblems, display headings, rule work, and necessary blank space shall be calculated as solid type; twelve lines shall be counted to the inch. Any contract providing for payment for such notice at a lesser sum than is provided in this section shall be valid.

Florida

Fla. Stat. §50.061. Amounts chargeable.

(1) The publisher of any newspaper publishing any and all official public notices or legal advertisements shall charge therefor the rates specified in this section without discount, rebate, commission or refund.

(2) The charge for publishing each such official public notice or legal advertisement shall be seventy cents per square inch for the first insertion and forty cents per square inch for each subsequent insertion, except that:

(a) In all counties having a population of more than three hundred four thousand according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be eighty cents per square inch for the first insertion and sixty cents per square inch for each subsequent insertion.

(b) In all counties having a population of more than four hundred fifty thousand according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be ninety-five cents per square inch for the first insertion and seventy-five cents per square inch for each subsequent insertion.

(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such

legal advertisements or official public notices for each insertion, including notices of all governmental bodies or agencies.

(4) Any person violating provision of this section, either by allowing or accepting any discount, rebate, commission or refund, shall be guilty of a misdemeanor, upon conviction thereof shall be punished by imprisonment of not more than 60 days or by fine not to exceed $300.00 or by both such fine and imprisonment in the discretion of the court.

(5) All official public notices and legal advertisements shall be charged and paid for on the basis of six-point type on six-point body.

(6) The provisions of this section, however, shall not be construed as in anywise affecting the provisions of law concerning the publication of delinquent tax lists.

Idaho

Idaho Stat. §60-105. Rates for official notices.—The rate to be charged for all official notices required by law to be published in any newspaper in this state, by any state, county, municipal official or other person, shall be as follows: two cents (2c) for each pica in a column line for the first insertion and fifteen cents (15c) per column line for each subsequent insertion. For table and figure matter, the rate shall be three cents (3c) for each pica in a column line for the first insertion, and fifteen cents (15c) per column line for each subsequent insertion. In the event that a column line ends in a one-half (½) pica measurement, the rate for such one-half (½) pica shall be

one-half (½) the rate established for a full pica for the type of matter set forth herein. For purposes of this section, a column line shall measure not less than ten and one-half (10½) picas in width and the type used shall not be smaller than 7-point nor greater than 8-point. Use of type smaller than 7-point for official notices is hereby prohibited. [1907, p. 27, §1; reen. R. C. & C. L., §1477; C. S. §2339; I. C. A., §58-105; am. 1951, ch. 29, §1, p. 41; am. 1955, ch. 135, §1, p. 274; am. 1971, ch. 35, §1, p. 80.]

Illinois

Ill. Stat. Ch. 100, §4. When weekly newspaper sufficient—Costs.—When any notice is required by law or order of court, or any contract, and it is not otherwise provided, it shall be sufficient to publish the same in a weekly newspaper, and in no case shall any greater amount be chargeable as costs for the publication of such notice than will be sufficient to publish the same in such weekly newspaper. [1874, Feb. 13, R.S. 1874, p. 723, §4.]

Indiana

Ind. Stat. §49-701 [12077]. Public official or governmental agency—Compensation of publisher—Schedule —Size of type—Proof of publication.—The cost of all advertising, which any duly elected or duly appointed public official or governmental agency is required by law to have published, or orders published, for which the compensation to the newspapers publishing such advertising is drawn from the public treasury of the governmental unit concerned therewith, shall be charged to and collected from the proper fund of the public treasury and paid over to the newspaper and/or newspapers publishing such adver-

tising, after proof of publication and claim for payment has been filed.

The compensation for the publishing of such advertising shall be by the line and shall be computed at the rate of one dollar and fifty cents [$1.50] per square of two hundred and fifty [250] ems for the first insertion and seventy-five cents [75c] per such square for each additional insertion required; Provided, That an additional charge of fifty per cent [50%] shall be allowed for the publication of all such legal advertising containing rule and figure work.

All legal advertisements shall be set in solid type not larger than the type used in the regular reading matter of the newspaper, without any leads or other devices for increasing space. All such advertisements shall be headed by no more than two [2] lines, neither of which shall total more than four [4] solid lines of the type in which the body of the advertisement is set.

Each newspaper publishing legal advertising shall submit proof of publication and claim for payment in duplicate on each such legal advertisement published. For each additional proof of publication required by any public official, a charge of fifty cents [50c] per copy shall be allowed the newspaper or newspapers furnishing such proof of publication. [Acts 1927, ch. 96, §1, p. 252; 1957, ch. 16, §1, p. 28.]

Iowa

Iowa Stat. T.31, §618.11. Fees for publication.—The compensation, when not otherwise fixed, for the publica-

tion in a newspaper of any notice, order, citation, or other publication required or allowed by law, shall not exceed one dollar for one insertion, and fifty cents for each subsequent insertion, for each ten lines of brevier type. In case of controversy or doubt regarding measurements, said controversy shall be referred to the state printing board, and its decision shall be final.

Kansas

Kan. Stat. §28-137. Newspaper fees for legal notices; proof of publications; taxation and collection. Newspapers shall be entitled to receive the following fees:

For publishing any legal notice, or any other proceeding or advertisement required by law to be published in any newspaper, at a rate of not exceeding the following schedule of rates per line: . . . .

Where column widths are other than those shown above, the rate per line of type should be proportionately increased or decreased. Proof of the publication of all such notices shall be made in the manner required by law or the order or citation of court or summons, and each such proof of publication shall be accompanied by a verified statement of the fees and charges therefor. The fees and charges of all such publications when made in any action or proceeding in any court of record, city court or justice of the peace court in this state shall be taxed as costs and collected in the same manner as other costs in said action or proceeding. [K.S.A. 28-137; L. 1968, ch. 177, §1; March 16.]

Minnesota

Minn. Stat. §331.08. Fees for publication of legal notices.—The fee for publication of a legal notice in any legal newspaper in this state shall be $1.80 per folio for the first insertion and $1.20 per folio for each subsequent insertion of a notice. The fees for the publication of the delinquent tax list shall be the same as now provided by section 279.07; provided that in all cases where a notice for publication contains tabular matter in whole or in part, or what is termed "price and one-half" or "double price" composition, an additional fee of 60 cents per folio shall be paid for all such price and one-half and double price composition matter for the first insertion of a notice; and in the publication of official ballots for elections in the counties and the state the same shall be measured as though the entire space occupied is that of solid brevier or eight-point type, and no additional fee shall be allowed on account of tabular matter. As amended Laws 1947, c. 318, §1; Laws 1949, c 111, §1; Laws 1957, c. 443, §1; Laws 1965, c. 819, §1.

Nebraska

Neb. Stat. §33-141. Legal notices; rates.—The legal rate for the publication of all legal notices shall be sixteen cents a line, single column, standard newspaper measurements for the first insertion, and shall be twelve cents a line, single column, standard newspaper measurement for each subsequent insertion. Publication of such notices may be in any type selected by the publisher, but as to fees for such publication the measurement shall be in eight point type.

Nevada

Nev. Stat. §238.070. Rates for official advertising of state and counties; annual contracts for county printing and advertising.

1. All advertising ordered or required by the State of Nevada or by the respective counties of the state shall be paid for by the state or the county ordering or requiring the same at the rate of not more than 30 cents per single column line 6-point type for the first insertion and not more than 20 cents per single column line for each subsequent insertion; an insertion to be held to be one publication per week whether the newspaper in which such advertising is ordered to be done be published daily or weekly.

New Jersey

N. J. Stat. §35:2-1. Rates for official advertising.

The price to be paid for publishing all official advertising as defined in section 35:1-1 of this Title in newspapers shall be as follows:

In newspapers published in the State of New Jersey having a bona fide net paid circulation of up to 2,500 copies, the rate shall be $0.16 per agate (or 5½ point) line for each insertion; in the case of any newspaper having a bona fide net paid circulation of not less than 2,500 copies nor more than 5,000 copies, the rate shall be $0.20 per agate line for each insertion; and in the case of any newspapers having a bona fide net paid circulation of not less than 5,000 copies and not more than 10,000 copies, the

rate shall be $0.22 per agate line per insertion; and in the case of any newspaper having a bona fide net paid circulation of not less than 10,000 copies and not more than 30,000 copies, the rate shall be $0.23 per agate line per insertion; and in the case of any newspaper having a bona fide net paid circulation of not less than 30,000 and not more than 50,000 copies, the rate shall be $0.24 per agate line per insertion; and in the case of any newspaper having a bona fide net paid circulation of not less than 50,000 copies and not more than 75,000 copies, the rate shall be $0.26 per agate line per insertion; and in the case of any newspapers having a bona fide net paid circulation of not less than 75,000 copies and not more than 100,000 copies, the rate shall be $0.32 per agate line per insertion; and in the case of any newspaper having a bona fide net paid circulation of not less than 100,000 copies and not more than 125,000 copies, the rate shall be $0.40 per agate line per insertion; and in the case of any newspapers having a bona fide net paid circulation of not less than 125,000 copies, and not more than 150,000 copies, the rate shall be $0.47 per agate line per insertion; and in the case of any newspapers having a bona fide net paid circulation in excess of 150,000 copies, the rate shall be $0.54 per agate line per insertion; but before any newspaper can charge the foregoing rates, the publisher or business manager of such newspaper must file with the properly authorized officer of every municipality, county or governing body, placing official advertising in such newspaper, an affidavit setting forth the average net paid circulation of such newspaper for the 12 months' period ending September 30 next preceding and the rate to be charged for official advertising, which in no case shall be in excess of, or below, the rates provided in the foregoing schedule.

The charge per agate or 5½ point line shall be based on measurement of a line of not less than 10 ems in width, but date lines, paragraph endings, titles, signatures and similar short lines or lines that require special emphasis, such as the title of the notice, shall be computed as full lines where set to conform to the usual rules of composition.

New Mexico

N. M. Stat. §10-2-7. Rates for legal notice or advertisement—Costs.—For the publication of all legal notices or advertisements required by law or the order of any court of record in this state to be published in newspapers, the publishers thereof shall be entitled to receive fifteen cents ($.15) for each column line of eight [8] point or smaller type, for the first insertion, and twelve cents ($.12) per line for each subsequent insertion. All emblems, display headings, rule work and necessary blank space shall be calculated as solid type, and shall be counted and paid for as such.

The clerk of any court in the state or any public trustee, county treasurer, or other public officer required by law to publish legal notices or advertisements shall tax the cost of publishing notices or advertisements, as prescribed in this section, as part of the costs of the cause or proceeding and shall collect for publication, before the cause or proceeding is closed, and shall remit to the publisher the proper cost of the legal notices or advertisements.

New York

N. Y. Stat. P.O. §70-a. Fees to be paid by public officers for public advertisements.— The charge for the publication of concurrent resolutions, proposed constitutional amendments, propositions or questions to be submitted to the voters of the state, tax sales and official notices required to be published by state boards, commissions or officers in newspapers of the state, shall be paid from the treasury on the audit and warrant of the comptroller, after certification by the proper officer that such a publication has been regularly made as prescribed by law. The charge for the publication, if authorized by law, of digests of laws of a local nature in the newspaper designated to publish such digests shall be paid by the several counties of the state in which such laws may be published, upon like certification. The charge for the publication of concurrent resolutions, proposed constitutional amendments, propositions or questions to be submitted to the voters of the state or of any political subdivision thereof or therein, tax sales by the state or any county or municipality therein, and of all official notices and advertisements authorized or required by law to be published at the expense of the state or of a county, city, town, village, public authority, public benefit corporation or other political or civil subdivision of the state, shall be at the rate of sixteen cents per line of a column width not less than ten pica ems, provided that in computing such charge per line the line shall average at least five words for each insertion in newspapers having less than two thousand five hundred circulation; seventeen and one-half cents per line for newspapers having two thousand five hundred or more circulation and less than five thousand; eighteen cents per line for newspapers having five thousand or more circula-

tion and less than seven thousand five hundred; seventeen cents per line for newspapers having seven thousand five hundred or more circulation and less than ten thousand; eighteen cents per line for newspapers having ten thousand or more circulation and less than fifteen thousand; and one and one-half cents per line in addition to the eighteen cents for the initial ten thousand circulation, for each additional five thousand circulation possessed by such newspapers. To all of the above rates eight cents per line shall be added to the initial insertion charge of each separate advertisement. To all of the above rates for the initial insertion eight cents per line shall also be added for tabular matter or intricate composition. Display advertising shall be charged agate measurement, fourteen lines to each inch, ten to thirteen pica ems wide, depending on the makeup of the newspaper publishing such copy. Every newspaper printed, published or having its principal office outside of a city having a population of over five hundred thousand inhabitants, as a condition precedent to designation as the official newspaper of any county, city, town, village or other political or civil subdivision of the state or for the making of claim for compensation under the foregoing provisions of this section, must be established at least one year and entered in the post office as second class matter.

North Carolina

N. C. Stat. §1-596. Charges for legal advertising.—The publication of all advertising required by law to be made in newspapers in this State shall be paid for at not to exceed the local commercial rate of the newspapers selected. Any public or municipal officer or board created by or existing under the laws of this State that is now

or may hereafter be authorized by law to enter into contracts for the publication of legal advertisements is hereby authorized to pay therefor prices not exceeding said rates.

No newspaper in this State shall accept or print any legal advertising until said newspaper shall have first filed with the clerk of the superior court of the county in which it is published a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication, and any owner or manager of a newspaper violating the provisions of this section shall be guilty of a misdemeanor. (1919, c. 45, ss. 1, 2; C.S., s. 2586; 1945, c. 635; 1949, c. 205, s. 1-1½.)

North Dakota

N. D. Stat. 46-05-03. Legal notices — Fees.— The fees to be paid to newspapers for the publication of:

1. Any notice or publication required by law to be published by the board of county commissioners or any county officer;

2. Any summons, citation, notice, or other document, proceedings, or process in an action or proceedings in any court of the state, which is required by law to be published;

3. Any publication required to be published by any state officer, elected or appointive;

4. Any notice of foreclosure of a real estate mortgage, or a chattel mortgage or other lien foreclosed by advertisement;

5. Any notice or publication required to be published by any city, village, township, school district, or other political subdivision of the state, or by any officer thereof; and

6. Any legal notice and legal publication of whatever kind or character required by law to be published, shall be fourteen cents per counted line of nonpareil or six point type for the first insertion and nine cents per line of nonpareil or six point type for each subsequent insertion, or eleven cents per counted line of brevier or eight point type for the first insertion and seven cents per line of brevier or eight point type for each subsequent insertion. All tabulated matter, leader work, or work containing one column of figures shall be figured at one and one-half times the rate for straight matter on first publication, and all tabulated matter with two or more columns of figures shall be computed at double the rate for straight matter on first publication. A line shall be construed to mean not less than eleven or more than thirteen ems pica of twelve point type in length. Wherever possible, all such legal notices and publications shall be set in single column.

Ohio

Ohio Stat. §7.10. Rates for legal advertising; definition of square.

For the publication of advertisements, notices, and proclamations required to be published by a public officer of the state, county, municipal corporation, township, school, benevolent or other public institution, or by a trustee, assignee, executor, or administrator, or by or in any court of record, except when the rate is otherwise

fixed by law, publishers of newspapers may charge for the first insertion three dollars for each square, and for each additional insertion, authorized by law or by the person ordering the insertion, two dollars for each square.

Fractional squares shall be estimated at a like rate for space occupied. In advertisements containing tabular or rule work, fifty per cent may be charged in addition to the foregoing rates. Newspapers having a circulation of over fifteen thousand may charge and receive for such advertisements, notices, and proclamations rates charged on annual contracts by them for a like amount of space to other advertisers who advertise in its general display and advertising columns. The publisher shall make and file with his bill before its payment an affidavit that the newspaper had a bona fide circulation of more than fifteen thousand at the time the advertisement, notice, or proclamation was published, and that the price charged in the bill did not exceed the rates provided in this section for such advertisement, notice, or proclamation.

As used in this section, a square is a space occupied by two hundred forty ems of the type used in printing such advertisements. Legal advertising shall be set up in a compact form, without unnecessary spaces, blanks, or headlines, and printed in type not smaller than nonpareil. The type used must be of such proportions that the body of the capital letter M is no wider than it is high and all other letter and characters are in proportion.

Except as may be done under section 2701.09 of the Revised Code, all legal advertisements or notices shall be printed in newspapers published in the English language only.

Oklahoma

Okla. Stat. §121. Fees for printing legal notices.

In all cases where publication of legal notices is required or allowed by law, the person or official desiring such publication shall be required to pay:

For all matters other than tabular matter, four cents (4c) per word for first insertion, and three cents (3c) per word for each subsequent insertion, with each separate group of numerals included in such matter to be counted as one (1) word, regardless of the number of digits involved;

For all tabular matter, in not to exceed eight (8) point type, including but not limited to lists of persons, firms and corporations whose personal property taxes are delinquent and lists of lands and town lots upon which taxes are delinquent, twenty-five cents (25c) per line per newspaper column in width, for first insertion, and twenty cents (20c) per line per newspaper column in width, for each subsequent insertion.

The county treasurer shall collect the cost of publication of lists of lands and town lots sold for delinquent taxes at original sale or resale from the individuals purchasing such lands and town lots at the sale or resale involved, and shall deposit all moneys so collected to the credit of the general fund of the county, and the publisher of the notice involved shall be paid for the publication of any such notice, from the general fund of the county, or, to the extend that proper appropriation be not available therefor at

the time of publication, from the "Resale-Property Fund" of the county.

Oregon

Ore. Stat. §193.090. Compensation for publication.

(1) When published in a newspaper having more than 40,000 proved circulation, as shown by the last annual report made to the United States Government, the compensation for the publication of all notices, summonses, citations, all notices of sheriffs' sales and other legal advertisements which are now or hereafter required by law to be published shall be not more than five cents per column inch per insertion, for each 1,000 of proved circulation.

(2) When published in any newspaper other than one described by subsection (1) of this section, compensation shall be as follows:

(a) The rate for county financial statements, reports and proceedings mentioned in ORS 193.030, 294.230, 294.235 and 294.250, foreclosure for delinquent taxes as provided in ORS 312.040, 312.190 and 312.400, summary of the budget documents mentioned in ORS 294.416, and all publications required by law to be made in the county official paper or papers shall be 20 cents per column line of 8-point type for the first insertion and 15 cents per column line of 8-point type for each subsequent insertion. If a different point type is used the total charge for such publication shall be the same as if 8-point type were used.

(b) The rate for all notices, summonses, citations and all other legal advertisements now or hereafter required by law or order of court, and not specifically set out in paragraph (a) of this subsection, shall be 20 cents per column line of 8-point type for the first insertion and 15 cents per column line of 8-point type for each subsequent insertion. If a different point type is used the total charge for such publication shall be the same as if 8-point type were used.

[Amended by 1963 c. 576, §36; 1963 c. 623, §1; 1971 c. 295, §1]

Pennsylvania

Pa. Stat. Ch. 1, T.45, §8. Publishers to fix and furnish rates; not to change rates without notice.

All newspapers of general circulation, official newspapers, legal newspapers, and legal periodicals, accepting and publishing official and legal advertising, are hereby required to fix and establish rates and charges for official, legal and all other kinds of advertising, offered or accepted for publication, and such newspapers and periodicals shall furnish, on demand, to any person or persons having use for the same, detailed schedules, stating the rates and charges which shall be deemed to be in force and effect until changed or altered, and, when changed or altered, such newspaper or periodical shall give the person, persons, corporation, association, municipality or municipalities, or public officers, authorized or required to publish

advertising, before demanding or receiving compensation at any increased rate, notice that the rates and charges of such newspaper or periodical or advertising have been changed or abrogated, and that increased advertising rates and charges have been established or fixed. 1929, May 16, P.L. 1784, §8.

South Carolina

S. C. Stat. Ch. 15, §10-1308. Charges for legal advertisements in newspapers.—State and county officials authorized by law to publish advertisements in the newspapers of this State, including advertisements of sales of real and personal property by masters, clerks of court, judges of probate and sheriffs, citations, notices to creditors, notices of final settlement by executors, administrators, guardians and all other persons acting in a fiduciary capacity, service of summons by publication, notices of election ordered by commissioners, reports of county treasurers, supervisors and superintendents of education, notices of county auditors, proclamations of the executive department, proposals for works and supplies by the heads of departments or other officials authorized to advertise for competitive bids and all other advertising whatever done by order of court or by State and county officials, shall be charged not exceeding one dollar per inch for the first insertion and not exceeding fifty cents per inch for each subsequent insertion for advertisements which, when the newspaper uses such type, shall be set in solid brevier type, including the caption and all other parts of the advertisement. Newspapers that do not use brevier type shall receive compensation based on brevier measure.

When the value of the real estate as to which any such advertisement is made is less than two hundred dollars only one half of the rate hereinbefore allowed shall be charged or allowed and when the value of such real estate is less than one hundred dollars only one fourth of the rate hereinbefore allowed shall be charged or allowed. The charge for printing the reports of the county treasurers and supervisors shall not exceed sixty dollars each per annum.

The publication of any of the notices herein mentioned may be let by contract for not more than the prices herein mentioned. (1952 Code §10-1308; 1942 Code §8894; 1932 Code §8894; Civ. C. '22, §5707; Civ. C. '12 §4195; Civ. C. '02 §3091; 1899 (22) 47; 1902 (23) 1074; 1905 (24) 847; 1915 (29) 72; 1919 (31) 45; 1921 (32) 160.)

South Dakota

S. D. Stat. §17-2-19. Fees chargeable for first legal publication—Tabular matter.—In all cases where any legal publication of anything is required or allowed by law, and no other fee is prescribed for such publication, the maximum fee which may be charged for said publication shall, except as provided by §17-2-21, be as follows:

* * *

Where column widths or type used is other than those shows above, the rate per line of type should be proportionately increased or decreased. (Formula: Length of line times 12 points; divide by size of type used to get ems; number of ems times .0053 cents for line charge.)

Tabular matter with one justification shall be charged for at rate and one-half; and tabular matter with two justifications or more at double the above rates.

Texas

Tex. Stat. T.1, Art. 29. Legal rate of publication. Wherever any publication, as publication is defined in Section 1 hereof, is authorized or required by any law, general or special, to be inserted in a newspaper, the legal rate which such newspaper shall charge for such publication shall be the lowest published rate of that newspaper for classified advertising.

All bills for publication shall be accompanied by a certificate of the publisher, under oath, certifying the number of publications and the dates thereof, together with the clipping of said publication from an issue of said newspaper, the rate charged, and certification that it is the lowest published classified rate. The Board of Control, or any district or county official charged with the publication of any notice required by law to be published, is hereby fully authorized and empowered to cancel any contract made by them, or either of them, in the event said Board or official may ascertain or determine that a higher rate is being charged by said newspaper than provided herein. All political advertising, except display advertising, shall be done at the same rate as legal notices, and under the same supervision and regulations. Political advertising shall include the announcements for public office.

This Act shall apply to all publications required by law, and it is specially provided that this Act shall apply to all citations or notices which are required to be pub-

lished or may be published in delinquent tax suits and to notices of sale of real estate under execution, order of sale, or any other judicial sale provided for in Articles 3808, 4203, 7276, and 7342 of the Revised Civil Statutes of Texas, 1925.

Virginia

Va. Stat. §8-81. Newspapers which may be used for legal notices and publications. — Whenever there are required by law to be published by any county, city or other municipality or municipal corporation, or by any municipal board or official board, or body, or office, or officials, or by any person or corporation, any ordinances, resolutions, or notices or advertisements of any sort, kind or character by printing and publishing the same in a newspaper, such newspaper must in addition to any qualifications otherwise required by law meet the following qualifications, namely: such newspaper shall be entirely printed in the English language, shall have been entered as second class mail matter under the postal laws and regulations of the United States and shall have a list of bona fide subscribers voluntarily engaged as such, who have paid or have agreed to pay a stated price for a subscription for a definite period of time. (1940, p. 163; Michie Code 1942, §6073b.)

Washington

Wash. Stat. §65.16.090. Publication fees. — Where publication of legal notices is required or allowed by law, the person or officer desiring the publication shall pay on a basis of two dollars and forty cents per folio of one hundred words for the first insertion and one dollar and

eighty cents per folio of one hundred words for each subsequent insertion, or its equivalent in number of words: Provided, That a newspaper having a circulation of over twenty thousand copies each issue may charge such additional rate as it deems necessary and just and any person or officer authorizing the publication of a legal notice in such newspaper may legally pay such rate as is charged by it: Provided further, That this section shall not apply to the amount to be charged for the publication of a legal notice or advertisement for a school district, city, town, county, state, municipal, or quasi municipal corporation or the United States government.

Wash. Stat. §65.16.095. Rates for political candidates.—The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card.

West Virginia

W. Va. Stat. §59-1-34. Charges for publication; general provisions relating to publication.

The price for publishing all advertisements and publications required to be made by law, or by the order of a court in any cause or proceeding therein, or by any provision of a deed of trust, or where any publication is made pursuant to law, shall not exceed two and three fourths cents for each word for the first insertion, and one and one half cents a word for each subsequent insertion required to be made: Provided, that for a notice to take depositions, notice to creditors, notice of receiving bids on public contracts, notice of the dissolution of a corporation,

and an order of publication, published less than four insertions, the rate shall be not more than seven and one half cents for each word for whatever number of insertions, less than four, that may be required to be made.

Notwithstanding the above paragraph, however, in those cases where a statute specifically provides for a different charge for publication (as in section two [§11A-3-2], article three, chapter eleven-A of this Code as amended), the price for publishing such advertisements or other publications shall be forty cents per item for each insertion in each newspaper.

In computing the number of words in a legal advertisement, not set solid, the basis shall be upon the size of type in which legal advertising is usually set by the newspaper making the publication, and shall be computed at the legal rate as though the matter was solid type, that is to say, on the basis of eighty-four words to the column inch in six point type, and fifty-four words to the column inch in eight point type, and any other size type in proportion.

If no newspaper in the county in which such publication should be made will insert the same for the times required, or for the price aforesaid, then the notice or advertisement may be published in a newspaper of general circulation in such county published in another county. If the publication is to be made in any case or proceeding in court, the court shall designate the newspaper in such other county and if the publication is not to be made in a case or proceeding in court, the court shall designate the newspaper in such other county and if the publication is not to be made in a case or proceeding in court, the

newspaper shall be selected by the person at whose instance it is to be made, or his agent; and when the notice published is an advertisement of a sale of property, the notice shall be posted, by the person or persons whose duty it is to place the advertisement for publication, at the front door of the courthouse of the county in which the sale is to be made at least three weeks prior to the time fixed for making the sale, and copies of such notice shall be posted in at least four other public places in such county at the same time.

In case of any publication made by the order of a court, in any case or proceeding therein, or by any provision of a deed of trust, the price paid shall be taxed in the bill of costs, and the newspaper making any such publications herein last mentioned, and in all other cases wherein legal publications are made as herein provided if required by the party or parties placing such advertisement, shall make and furnish, under oath, a certificate of publication of each advertisement so published, showing the number of times it was inserted in such newspaper, the dates of the first and last insertions thereof, and the amount of costs for such publication, as required by this section. Any posting of any such advertisement at the front door of the courthouse, when so required, shall be done by the publisher of the newspaper in which the publication was published, and in such cases the certificate of publication herein provided for shall state that the advertisement was posted at the front door of the courthouse. In cases where any such notices are not published by a newspaper, the certificates and affidavits herein provided for shall be made by the party who would place the advertising with the newspaper had it been published by such newspaper.

All advertisements required to be made by the State of West Virginia, or any county, district, school district, city, town or village, or any political subdivision thereof or levying body, shall be published in a daily, tri-weekly, semi-weekly, or weekly newspaper or newspapers, as the case may be, of general circulation in the county wherein the publication is to be made, and representing one or both of the two major political parties in such county, and which shall have been published continuously at least once a week for a period of one year at the time of placing such legal advertising, and at a plant located in this State and capable of printing and publishing a weekly newspaper of general circulation and owned by the owner of such newspaper, except and unless there be no newspaper in that county affiliated with one of two political parties: Provided, that where any such newspaper succeeds to the field of a former established newspaper, it shall be eligible to publish such legal advertising from its inception.

Any citizen, taxpayer, or the owner or publisher of any newspaper entitled by law to have any publication made in his newspaper, which any county court or tribunal created in lieu thereof, board of education, council of a municipal corporation, or public officer, shall fail or refuse to make, may have a writ of mandamus to compel the making of such publication: Provided, that the newspaper is willing to accept the price prescribed therefor by law.

In no case involving the publication of paid advertisements for candidates for political office shall the rate charged by any publisher be more than the average rate received by him from private patrons for similar advertising composed of reading matter or photographs and requiring the same amount of space.

Wisconsin

Wis. State. §331.25. Fees for publishing.—(1) The fees for publishing a legal notice shall be not more than $1.25 per folio for the first insertion, and 90 cents per folio for each insertion after the first. The newspaper may increase such rates up to 10 per cent for each 4,000 of circulation or fraction thereof above 8,000 of circulation, based on previous year-end circulation figures, not to exceed, however, an additional increase of 50 percent. Where compensation is required to be based upon the square, the fees per square shall be the same as the fees per folio herein provided.

(2) Provided that in all newspapers published in counties containing more than two hundred thousand population the fees for the publication of a legal notice may be equal to, but not in excess of, the regular publishing rate actually required from time to time of private advertisers for similar advertising matter.

(3) No fee shall be paid and no public funds shall be used for subsidizing any privately owned medium of distribution, or for payment for any public advertising or notice in any privately owned medium of distribution which has not previously qualified as a public newspaper for a period of 2 years as defined in this chapter.

TABLE V

STATUTES FORBIDDING PUBLICATION OF INFORMATION DEALING WITH LOTTERIES

California

Cal. Stat. Crim. § 323. Lottery offices: (Keeping or) advertising lottery offices.—Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor.

Colorado

Colo. Stat. 40-16-4. Newspapers advertising lottery —penalty.—It shall be unlawful for any person, association or corporation, being the owner of any newspaper published in this state, to publish in any such newspaper any advertisement of any lottery, game or device of chance, whether the drawing be to take place in this state or not. Whovere violates this provision, upon conviction, shall be fined not less than one thousand dollars. Source: L. 81, p. 179, § 4; G. S. §2199; R. S. 08, § 4115; C. L. § 3762; CSA, C. 104, § 4; CRS 53, § 40-16-4.

Florida

Fla. Stat. 849.09. Lottery prohibited.—1. It shall be unlawful for any person in this state to:

(c) Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise; or

(d) Aid or assist in the setting up, promoting or conducting of any lottery or lottery drawing, whether by writing, printing or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing.

Indiana

Ind. Stat. 10-2303 (2681). Lottery—Advertising.—Whoever writes, prints, advertises or publishes in any way an account of any lottery, gift enterprise or scheme of chance of any kind or description, by whatever name, style or title the same may be denominated or known, stating when or where the same is to be drawn, what the prizes therein or any of them are, or the price of a ticket, or showing therein where any ticket may be obtained, or in any way giving publicity to such lottery, gift enterprise or scheme of chance, shall, on conviction, be fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00). (Acts 1905, ch. 169, § 556. p. 584.)

Iowa

Iowa Stat. 726.8 Lottery and lottery tickets.—If any person make or aid in making or establishing, or advertise or make public any scheme for any lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase,

or receive any ticket or part of a ticket in any lottery or number thereof; or have in his possession any ticket, part of a ticket, or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same on his own account or as the agent of another, he shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars, or both. Constitutional Provisions. Art. 3, § 28 provides that no lottery shall be authorized by this state, nor the sale of lottery tickets allowed.

Maryland

Md. Stat. Art. 27, § 363. Publication of account of lottery.—If any person shall be printing, writing, or in any other way publish an account of any lottery, stating when or where the same is to be drawn, or the prizes therein, or any of them, or the price of a ticket or a share therein, or where any ticket may be obtained therein, or in any way aiding or assisting in the same, he shall on conviction be subject to a fine of one hundred dollars, or to imprisonment for the term of sixty days, at the discretion of the court.

Michigan

Mich. Stat. 750.375. Same; advertising, printing, publishing tickets.—Sec. 375. Advertising, printing, etc., lottery tickets or gift enterprises—Any person who shall advertise, print or publish any lottery ticket or gift enterprise, or any share in any such ticket, for sale either by himself or by another person, or who shall set up or exhibit, or shall devise and make for the purpose of being set up and exhibited, any sign, symbol or any emblematic or other

representation of a lottery or gift enterprise, or of the drawing thereof, in any way indicating where a lottery ticket or a share thereof, or any such writing, certificate, bill, goods, merchandise or chattels, token or other device, before mentioned, may be purchased or obtained, or shall in any way invite or entice, or attempt to entice, any other person to purchase or receive the same, he shall be guilty of a misdemeanor.

Mississippi

Miss. Stat. § 2274. Lotteries—newspapers.—If any newspaper published or circulated in this state shall contain an advertisement of any lottery whatever, or any matter intended to advertise a lottery, no matter where located, the editor or editors, publisher or publishers, and the owner or owners thereof permitting the same, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars, and be imprisoned in the county jail not less than ten days nor more than three months, for each offense; and the issuance of each separate daily or weekly edition of the newspaper that shall contain such an advertisement shall be considered a separate offense. Sources: Codes, 1892, § 1203; 1906, § 1281; Hemingway's 1917, § 1013; 1930, § 1042.

Missouri

Mo. Stat. 563.440. Advertising or selling lottery tickets.—Any person who shall sell or expose to sale, or shall keep on hand for the purpose of sale, or shall adver-

tise or cause to be advertised for sale, or who shall advertise or cause to be advertised for sale, or who shall print or publish an advertisement, or shall aid or assist, or be in anywise concerned in the sale or exposure to sale of any lottery ticket or tickets, or any share or part of any lottery ticket in any lottery, or device in the nature of a lottery within this state or elsewhere and shall be convicted thereof in any court of competent jurisdiction, shall, for each and every offense, forfeit and pay a sum not exceeding one thousand dollars. As amended Laws 1963, p. 684, § 1.

Nebraska

Neb. Stat. 28-963. Advertising lottery; penalty.— If any person shall be printing, writing, or in any other way, publish an account of any lottery or scheme of chance, as defined in section 28-963.01, of any kind or description, to be carried on, held or drawn, either out of or within the State of Nebraska, by whatever name, style or title the same may be denominated or known, stating when or where the same is to be drawn, or the prizes therein or any of them, or any information in relation to such prizes or any of them, or the price of a ticket, show or chance therein, or where any ticket may be obtained, or in any way aiding or assisting in the same, or in any way giving publicity to such lottery or scheme of chance, shall be subjected to a fine not exceeding five hundred dollars.

North Carolina

N. C. Stat. § 14-289. Advertising lotteries. — If anyone, by writing or printing or by circular or letter or in any other way, advertise or publish an account of a

lottery, whether within or without this State, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a misdemeanor. (1887, c. 211; Rev., s. 3725; C. S., s. 4427.)

North Dakota

N. D. Stat. 12-24-06. Advertising lotteries—Misdemeanor.— Each person who, by writing or printing, by circulars or letters, or in any other way, advertises or publishes any:

1. Account of any lottery, stating when or where the same is to be or has been drawn, or what are the prices, or any of them therein, or the price of a ticket, or of any share or interest, or where it may be obtained, or in any way aiding or assisting the same, or which is adapted to inducing persons to adventure therein;

2. Account of the opening, setting up, or keeping of any office or other place for either of the purposes prohibited by section 12-24-05; or

3. Offer, notice or proposal for insuring or receiving consideration for insuring the drawing of tickets, shares, or interest in any lottery,

is guilty of a misdemeanor. The provisions of sub-sections 1 and 2 are applicable wherever the advertisement was published, or the letter or circular sent or delivered through or in this state, notwithstanding that the person causing or procuring the same to be published, sent, or delivered, was out of this state at the time of so doing.

Oklahoma

Okla. Stat. 21 § 1056. Advertising lotteries.— Every person who, by writing or printing, by circulars or letters, or in any other way advertises or publishes any account of any lottery stating when or where the same is to be or has been drawn, or what are the prizes or any of them therein, or the price of a ticket or of any share or interest or where it may be obtained, or in any way aiding or assisting the same, or adapted to induce persons to adventure therein, is guilty of a misdemeanor. R.L. 1910, § 2475.

South Carolina

S. C. Stat. Art. 17, §7. Lotteries.—No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State; and the General Assembly shall provide by law at its next session for the enforcement of this provision.

Utah

Utah Stat. 76-27-13. Maintaining office for sale.— Every person who opens, sets up or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of, any tickets in any lottery, or who, by printing, writing or otherwise, advertises or publishes the setting up, opening or using of any such office, is guilty of a misdemeanor.

Vermont

Vt. Stat. T. 13 § 2103. Lottery tickets.—(a) A person shall not:

(4) Set up, exhibit or publish or cause to be set up, exhibited or published within this state written or printed proposals to buy, sell or procure such ticket or interest therein.

Washington

Wash. Stat. 9.59.020. Selling tickets, advertising.—Every person who shall sell, give, or in any way whatever furnish or transfer to or for another, a ticket, chance, share or interest, or any paper, certificate or instrument purporting to be or to represent a ticket, chance share or interest in, or dependent upon the event of, a lottery, to be drawn within or without the state; or who by writing, printing, circular or letter, or in any other way shall advertise or publish the account of a lottery in or out of the state, stating how, when or where the same is to be or has been drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, shall be guilty of a gross misdemeanor.

TABLE VI

STATUTORY RESTRICTIONS ON MEDIA ELECTIONEERING IN VICINITY OF POLLING PLACES

Arizona

Ariz. Stat. §16-862. "Fifty-foot limit" notices; posting; penalty for violation.

(A) The board of supervisors shall furnish with the ballots for each polling place, three notices, printed on

muslin in letters not less than two inches high, reading; "Fifty-foot limit" and underneath that heading the following:

"No person shall be allowed to remain inside these limits while the polls are open, except for the purpose of voting, and except the election officials and not more than one representative of each political organization represented on the ballot, such representative to be one of three appointed by the chairman of the local committee of such political organization. Voters having cast their ballots shall at once retire without the fifty-foot limit. A person violating any provision of this notice is guilty of a misdemeanor."

(B) Before opening the polls, the election marshal shall post three fifty-foot limit notices approximately fifty feet, in different directions, from the entrance of the place in which the election is being held.

(C) Any person violating any provision of the fifty-foot limit notice is guilty of a misdemeanor.

Arkanasas

Ark. Stat. §3-1415. Electioneering by election officer —Electioneering near polls—Intimidation or bribery of voters—Penalty.— No officer of election shall do any electioneering on election day. No person whomsoever shall do any electioneering in any polling room, or within one hundred [100] feet of any polling room on election day. No person shall, at or before any election, directly or indirectly, hire or bribe any elector to vote for or against the nominee of any political party, or for or against any particular question or candidate, by any threat or warning

of personal violence or injury, or by any threat or warning of ejectment from rented or leased premises, or by the foreclosure of any mortgage or deed of trust, or of any action at law or equity, or of discharge from employment, or of expjulsion from membership in any church, lodge, secret order or benevolent society, or by any oath or affirmation or secret written pledge. Nor shall any elector take or receive any money or other valuable thing, or the promise of any money or other valuable thing, in consideration that he shall or will vote for or against any candidate for office, or for or against any candidate or question, or shall promise to vote for or against any such candidate or question. Any violation of this act shall be deemed a felony, and on conviction, shall be punished by imprisonment in the penitentiary not less than one [1] year nor more than three [3] years. [Act Mar. 4, 1891, No. 30, §39, p. 32; C. & M. Dig., §3809; Pope's Dig., §4779.]

California

Cal. Stat., Art. 1, §14212. Electioneering.—No person, including an election officer, shall do any electioneering on election day within 100 feet of any polling place.

Florida

Fla. Stat. §104.36. Distribution of literature, etc., near polling places.—On the day of any election it shall be unlawful for any person to distribute any political pamphlets, cards or literature of any kind, or solicit votes, or approach any elector in an attempt to solicit votes within 100 yards of any polling place. All peace officers or election officials shall arrest any person violating the provi-

sions of this section in their presence. Any person violating the provisions of this section shall be, upon conviction, guilty of a misdemeanor.

Idaho

Idaho Stat. §18-2318. Electioneering at polls.— No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within one hundred feet thereof, nor obstruct the door or entries thereto, or prevent free ingress to, and egress from, said building. Any election officer, sheriff, constable or other peace officer is hereby authorized, and it is hereby made the duty of any such officer, to arrest any person violating any of the provisions of this section, and such offender shall be punished by a fine not exceeding $100.00, or less than twenty-five dollars. [1890-1891, p. 50, §4; reen. 1899, p. 27, §4; reen. R.C. & C.L., §6371; C.S., §8112; I.C.A., §17.417.]

Indiana

Ind. Stat. §29-5940. Electioneering—Disclosing vote. —No officer of election shall disclose to any person the name of any candidate for whom any voter has voted. No officer of election shall do any electioneering on election day. No person whatever shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling-place, or within fifty [50] feet of any polling-place. No person shall apply for or receive any ballot in any polling-place other than in which he is entitled to vote. No person shall show his ballot after it is marked to any person in such a way as to reveal the

contents thereof or the name of any candidate or candidates for whom he has marked his vote; nor shall any person examine a ballot which any elector has prepared for voting or solicit the elector to show the same. No person except the inspector of election, or a member of the board who may be temporarily acting for him, shall receive from any voter a ballot prepared by him for voting. No voter shall receive a ballot from any person other than one of the clerks; nor shall any person other than a clerk deliver a ballot to a voter to be voted. No voter shall deliver any ballot to an inspector except the one he receives from the clerk. No voter shall place any mark upon his ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the one voted by him. Whoever shall violate any provision of this section shall be deemed guilty of a felony. [Acts 1945, ch. 208, §426, p. 680.]

Iowa

Iowa Stat. T.4, §49.107. Prohibited acts on election day.—The following acts, except as specially authorized by law, are prohibited on any election day:

1. Loitering, congregating, electioneering, treating voters, or soliciting votes, during the receiving of the ballots, within one hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held.

Kentucky

Ky. Stat. §118.330 [1467; 1470; 1472; 1569] Persons to keep away from polls; electioneering at polls prohibited.

(1) No person, other than the election officers and challengers, shall be permitted within the voting room while the vote is being polled, except for the purpose of voting or except by authority of the election officers to keep order and enforce the law. No person, other than the election officers and challengers, shall remain within fifty feet of the polls, except when voting.

(2) No officer of election shall do any electioneering on election day.

(3) No person shall do any electioneering on election day within any polling place or within fifty feet thereof.

(4) No voter shall be permitted to converse with others while in the voting room concerning their support or nonsupport of any candidate, party or issue to be voted on, except as provided in KRS 118.300.

Louisiana

La. Stat. §1534. Acts prohibited on election day; electioneering; exceptions; enforcement; penalty.

A. It shall be unlawful, except as otherwise provided herein, for any person, between the hours of 6:00 o'clock a.m. and 9:00 o'clock p.m., on the day on which is being held any primary, general or special election, to perform, or cause to be performed, any of the follwing acts within

a radius of three hundred feet of any polling place being used in such election:

(1) To solicit in any manner, or by any means whatsoever, any other person to vote for or against any candidate or proposition being voted for in such election; or

(2) To loiter within the above described area of any such polling place; or

(3) To hand out campaign cards, pictures, or other campaign literature, of any kind or description whatsoever; or

(4) To place or display political signs, pictures or other form of political advertising.

Maine

Me. Stat. Ch. 23, §892. Political activities.—On election day certain activity is prohibited in or near the voting place.

1. Instruction limited. Within the voting place, a person shall not instruct another in the method of marking his ballot, except as provided in section 862.

2. Influence prohibited. Within the voting place, a person shall not influence or attempt to influence another as to his choice of candidates.

a. Limitation. This does not prohibit a candidate from attendance at the voting place and oral communication with voters as long as he does not attempt to influence their vote.

3. Advertising prohibited. A person shall not display any advertising material or operate any advertising medium intended to influence the opinion of any voter, within 250 feet of the entrance to the voting place.

Minnesota

Minn. Stat. §211.15. Soliciting near polling places prohibited.

It shall be unlawful for any person within 100 feet of the building in which any polling place is situated on the day of any primary or election to ask, solicit, or in any manner try to induce or persuade any voter on such primary or election day to vote for or refrain from voting for any candidate or the candidates of any political party or organization, or any measure submitted to the people; and, upon conviction thereof, he shall be punished by a fine of not less than $5 nor more than $100 for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by a fine as aforesaid or by imprisonment in the county jail for not less than five nor more than 30 days or by both such fine and imprisonment.

Any person who shall at any place on the day of any primary or election circulate or distribute, or cause to be circulated or distributed, any campaign cards, candidates' cards, placard or campaign literature of any kind whatsoever shall be guilty of a misdemeanor. Nothing herein contained shall be construed as modifying or repealing the provisions of section 210.05. Laws 1959, c. 675, art. XII, §15.

Missouri

Mo. Stat. §76.160. Election regulations.

1. No person or persons shall electioneer or solicit votes for any elective officer within one hundred feet of any polling place on election days.

* * *

Nevada

Nev. Stat. §293.592. Soliciting votes; electioneering. —It is unlawful within 100 feet of the entrance from the public thoroughfare to any polling place, marked as such entrance:

1. For any person to solicit a vote or speak to a voter on the subject of marking his ballot.

2. For any person, including an election board officer, to do any electioneering on election day.

New Hampshire

N. H. Stat. §59:125. Distribution of Cards, etc.— No person as candidate for office or representing or working for a candidate shall, within the building where an election is being held, distribute or post any cards or other printed or written matter. Whoever violates any of the provisions of this section shall be fined not more than one hundred dollars.

New Mexico

N. M. Stat. §3-20-14. Electioneering too close to the polling place.—Electioneering too close to the polling place

consists of any form of campaigning on election day within one hundred [100] feet of the building in which the polling place is located, and includes the display of signs or distribution of campaign literature.

Whoever commits electioneering too close to the polling place is guilty of a petty misdemeanor.

New York

N. Y. Stat. Art. 8, §193(2). General provisions as to conduct of elections.—While the polls are open no person shall do any electioneering within the polling place, or within one hundred feet therefrom in any public street, or within such distance in any place in a public manner; and no political banner, poster or placard shall be allowed in or upon the polling place or within one hundred feet therefrom during the election.

North Carolina

N. C. Stat. §163-147. No loitering or electioneering at voting place.—No person or group of persons shall, while the polls are open at the voting place on the day of the primary or election, loiter about, congregate, distribute campaign material, or do any electioneering within the voting place, or within 50 feet in any direction of the entrance or entrances to the building in which the voting place is located. Notwithstanding the above provision, if the voting place is located in a large building, the registrar and judges of the precinct may designate the entrance to the voting place within said building and none of the above activity shall be permitted within 50 feet of said entrance or entrances of said voting place. This section shall not, however, prohibit any candidate for nomination or election

from visiting such voting place in person, provided he does not enter the voting enclosure except to cast his vote as a registered voter in said precinct. The county boards of elections and precinct registrars shall have full authority to enforce the provisions of this section. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1971, c. 537.)

North Dakota

N. D. Stat. §16-20-19. Electioneering on election day —Penalty.—Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be punished by a fine of not less than five dollars nor more than one hundred dollars for the first offense. For the second and each subsequent offense occurring on the same or different election days, he shall be punished by a fine as provided in this section, or by imprisonment in the county jail for not less than five days nor more than thirty days, or by both such fine and imprisonment. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure, which are displayed on fixed permanent billboards, shall not, however, be deemed a violation of this section.

South Carolina

S. C. Stat. §23-658.2. When and where unlawful to distribute campaign literature.—It shall be unlawful on

any election day within two hundred feet of the building wherein a polling place is located for any person to distribute any type of campaign literature or place any political posters. The poll manager shall use every reasonable means to keep the area within two hundred feet of the polling place clear of political literature and displays, and the county and municipal law-enforcement officers shall, upon request of a poll manager, remove or cause to be removed any material within two hundred feet of a polling place distributed or displayed in violation of this section.

South Dakota

S. D. Stat. §12-18-3. Electioneering by officer of election or at polling place prohibited—Obstruction of polling place prevented by officers—Violation as misdemeanor —Penalty.—No officer of election shall do any electioneering on election day.

No person whatsoever shall do any electioneering on election day within any polling place or any building in which an election is being held or within fifty feet thereof, nor obstruct the doors or entries thereto or prevent free ingress to and egress from said building.

Any election officer, sheriff, constable, or other peace officer is hereby authorized and empowered and it is hereby made his duty to clear the passageways and prevent such obstruction, and to arrest any person so doing.

Whoever shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two

hundred dollars and adjudged to pay the costs of prosecution, and shall stand committed to the county jail until such fine and costs are paid, not exceeding sixty days.

Texas

Tex. Stat. Ch. 7, Art. 259.231. Electioneering near polls.—Whoever shall do any electioneering or loitering within one hundred feet of the entrance of the place where the election is to be held, or who shall hire any vehicle for the purpose of conveying voters to the polling place, or shall wilfully remove any ballots from the polling place, except as permitted by law, shall be fined not exceeding five hundred dollars. Sec. 159, p. 559, Acts 1905.

Virginia

Va. Stat. §24.1-101. No loitering near polls; notice of prohibited area.—During the receiving and counting of the ballots, it shall be unlawful for any person to loiter or congregate within forty feet of any entrance of any polling place; in any manner to hinder or delay a qualified voter in reaching or leaving a polling place; within such distance to give, tender, or exhibit any ballot, ticket or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote.

The officers of election shall, prior to the opening of the polls, determine the area designated, delineate the boundaries of such prohibited area, and post sufficient notices which set forth the words "Prohibited Area" in two-inch type and also set forth the provisions of this section and §24.1-267 in not less than twenty-four point type.

The officers of election shall post the notices on the prohibited boundary to be visible to the voter and the public. (Code 1950 [Repl. Vol. 1969], §§24-186, 24-188; 1970, c. 462; 1971, Ex. Sess., c. 119.)

Washington

Wash. Stat. §29.51.020. Electioneering within the polls forbidden—Prohibited practices as to ballots—Penalty.—No person shall do any electioneering, or circulate cards or handbills of any kind, or solicit signatures to any kind of petition on primary or election day within any polling place, or any building in which an election is being held, or within one hundred feet thereof, nor obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officer shall have power to and shall clear the passageway and prevent such obstruction, and arrest any person creating such obstruction.

No person shall remove any ballot from the polling place before the closing of the polls; nor shall any person solicit the elector to show his ballot; nor shall any person except a judge of election receive from any elector a ballot prepared for voting; nor shall any person other than such inspector or judges of election deliver a ballot to such elector. Whoever violates any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars, and adjudged to pay the costs of prosecution.

West Virginia

W. Va. Stat. §3-9-6. Unauthorized presence in election room; sixty-foot limit; penalties.—If any person, not herein authorized so to do, shall enter or attempt to enter the election room, except upon a lawful errand and for a proper purpose, or shall remain within sixty feet of the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail for not more than thirty days. (1891, c. 89, §81; Code 1923, c. 3, §81; 1963, c. 64.)

Wisconsin

Wis. Stat. §12.64. Electioneering; marking ballot, etc.—

(1) No officer of any election held under Title II shall engage in electioneering on the day of which any such election is held, nor shall any person solicit votes for any candidate or party or engage in any electioneering whatever on the day of any such election within 100 feet of any entrance to any building containing any polling place, nor remove any ballot from any polling place before the polls are closed, nor show his ballot after it is marked to any person in such a way as to reveal the mark or marks made thereon, nor solicit any person to so show his ballot.

TABLE VII

STATUTES BANNING ADVERTISEMENT FOR DIVORCE

Arizona

Ariz. Stat. T.13 §263. Advertising the procurement of divorces or annulments; punishment.—A person who advertises, prints, publishes, distributes or circulates, any advertisement or offer to procure or obtain, or to aid in procuring or obtaining, a divorce, or annulment of a marriage, or offers to engage, appear or act as attorney, counsel or referee in a suit for alimony, divorce or annulment of marriage, either in this state or elsewhere is guilty of a misdemeanor.

Illinois

Ill. Stat. 40 §22. Advertising for divorces pronibited. —Penalty.—Whoever advertises, prints, publishes, distributes or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind, with intent to procure, or to aid in procuring any divorce, either in this state or elsewhere, shall be fined not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000.00), for each offense, or imprisoned in the county jail not less than three months nor more than one year, or both in the discretion of the court. This act shall not apply to the printing or publishing of any notice, or advertisement required or authorized by any statute of the State of Illinois. 1877, April 12, Laws 1877, p. 95 1.

Indiana

Ind. Stat. 10-3109 (2863). Promoting divorces.—Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed or circulated, any pamphlet, circular, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind, advertising or calling attention to the procuring of divorces, either in this state or elsewhere, shall on conviction, be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00).

Massachusetts

Mass. Stat. 208 §43. Advertisement to procure divorce.—Whoever writes, prints or publishes, or solicits another to write, print or publish, any notice, circular or advertisement soliciting employment in the business of procuring divorces or offering inducements for the purpose of procuring such employment shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months.

Minnesota

Minn. Stat. §518.29. Advertisment soliciting divorce business prohibited. Every person who shall advertise, print, publish, distribute, or circulate, or cause to be advertised, printed, published, distributed, or circulated, any pamphlet, card, handbill, circular, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or nullity of any marriage, or offering to engage, appear, or act as

attorney, counsel or referee in any suit for divorce, alimony, or the severance, dissolution, or nullity of any marriage, either in this state or elsewhere, shall be guilty of a gross misdemeanor and punished by imprisonment in the county jail for not more than six months or by fine of not less than $100 nor more than $500.

New York

N. Y. Stat. Art. 21 §337. Advertising to procure divorces.—Whoever prints, publishes, distributes or circulates, or causes to be printed, published, distributed or circulated any circular, pamphlet, card, hand bill, advertisement, printed paper, book, newspaper or notice of any kind offering to advise on laws of any foreign state, nation or jurisdiction for the express purpose of procuring or aiding in procuring any divorce, severance, dissolution, or annulment or any marriage, or offering to procure or to aid in procuring any divorce, or the severance, dissolution, or annulment of any marriage, or offering to engage, appear or act as attorney or counsel in any suit for alimony or divorce or the severance, dissolution, or annulment of any marriage, either in this state or elsewhere, is guilty of a misdemeanor. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state. Added L.1965, c. 1031, §68, eff. Sept. 1, 1967.

South Carolina

S. C. Stat. §20-120. Advertising to procure divorce illegal.—It shall be unlawful for any person to print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any card, handbill, advertisement, printed paper, book, newspaper or notice of

any kind offering or otherwise to advertise to procure, attempt to procure or aid in procuring any divorce either in this State or elsewhere. But this section shall not apply to the printing or publishing of any notice or advertisement required or authorized by the laws of this State. (1952 Code §20-120; 1949 (46) 216.)

Virginia

Va. Stat. §20-122. Advertising offer to obtain divorces.—Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind offering to procure, or aid in procuring, any divorce, or the severance, dissolution, or annulment of any marriage, and by such publication as above mentioned offers to engage, appear, or act as attorney or counsel in any suit for alimony, divorce, or the severance, dissolution, or annulment of marriage, either in this State or elsewhere, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than three hundred dollars, and the person so convicted shall, in addition to the above penalty, be disbarred from practicing as such attorney at law in the courts of this Commonwealth. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this State or orders of any court. (Code 1919, §5116.)

Washington

Wash. Stat. 9.04.020. Advertising divorce business.—Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause

or allow to be posted or distributed, in any place frequented by the public, any card or notice offering to procure or obtain, or to directly or indirectly aid in procuring or obtaining any divorce or the dissolution or nullification of any marriage either in this state or elsewhere, shall be guilty of a misdemeanor. Any advertisement stating or intimating that any person is a specialist in "the laws of husband and wife" or "domestic relations", or is engaged in the business of procuring divorces, shall be considered a violation of this section.

West Virginia

W. Va. Stat. §48-2-29. Advertising of any offer to obtain divorces prohibited.—Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure, or aid in procuring, any divorce, or the severance, dissolution, or annulment of any marriage, or, by such publication as above mentioned, offers to engage, appear or act as attorney or counsel in any action for alimony, divorce, or the severance, dissolution, or annulment of marriage, either in this State or elsewhere, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than three hundred dollars, and if the person so convicted be an attorney at law he shall, in addition to the above penalty, be disbarred from practicing as such attorney at law in the courts of this State. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this State or orders of any court. (1931 Code, § 48-2-30. 1969, c. 49.)

TABLE VIII

RETRACTION STATUTES MITIGATING DAMAGES

Alabama

Ala. Stat. T.7, §913. (7360) (3749) (1441) (2728) (2972) (2623) (2221) Retraction mitigates damages.—The defendant in an action of slander or libel may prove under the general issue in mitigation of damages that the charge was made by mistake or through inadvertence, and that he has retracted the charge and offered amends before suit by publishing an apology in a newspaper when the charge had been thus promulgated, in a prominent position; or verbally, in the presence of witnesses, when the accusation was verbal or written, and had offered to certify the same in writing.

California

Cal. Stat. P.R. §48a. [Demand and publication or broadcast of correction]

1. In any action for damages for the publication of a libel in a newspaper, or of a slander by radio broadcast, plaintiff shall recover no more than special damages unless a correction be demanded and be not published or broadcast, as hereinafter provided. Plaintiff shall serve upon the publisher, at the place of publication or broadcaster at the place of broadcast, a written notice specifying the statements claimed to be libelous and demanding that the same be corrected. Said notice and demand must be served within 20 days after knowledge of the publication or broadcast of the statements claimed to be libelous.

2. If a correction be demanded within said period and be not published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as were the statements claimed to be libelous, in a regular issue thereof published or broadcast within three weeks after such service, plaintiff, if he pleads and proves such notice, demand and failure to correct, and if his cause of action be maintained, may recover general, special and exemplary damages; provided that no exemplary damages may be recovered unless the plaintiff shall prove that defendant made the publication or broadcast with actual malice and then only in the discretion of the court or jury, and actual malice shall not be inferred or presumed from the publication or broadcast.

3. A correction published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as the statements claimed in the complaint to be libelous, prior to receipt of a demand therefor, shall be of the same force and effect as though such correction had been published or broadcast within three weeks after a demand therefor.

4. As used herein, the terms "general damages", "special damages", "exemplary damages" and "actual malice", are defined as follows:

(a) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings;

(b) "Special damages" are all damages which plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges

and proves he has expended as a result of the alleged libel, and no other;

(c) "Exemplary damages" are damages which may in the discretion of the court or jury be recovered in addition to general and special damages for the sake of example and by way of punishing a defendant who has made the publication or broadcast with actual malice;

(d) "Actual malice" is that state of mind arising from hatred or ill will toward the plaintiff; provided, however, that such a state of mind occasioned by a good faith belief on the part of the defendant in the truth of the libelous publication or broadcast at the time it is published or broadcast shall not constitute actual malice.

Connecticut

Conn. Stat. §52-237. Damages in actions for libel.—In any action for a libel the defendant may give proof of intention; and unless the plaintiff proves either malice in fact or that the defendant, after having been requested by him in writing to retract the libelous charge, in as public a manner as that in which it was made, failed to do so within a reasonable time, he shall recover nothing but such actual damage as he may have specially alleged and proved. (1949 Rev., §7983.)

Delaware

Del. Stat. 10, §3919. Libel actions; notice; effect of publication in good faith and retraction.

(a) Before any action, either civil or criminal, is brought for the publication in a newspaper of a libel, the

plaintiff or prosecutor shall at least five days before instituting such action serve notice in writing on the defendant specifying the article and the statements therein which he alleges to be false and defamatory.

(b) If it appears upon the trial that the article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in the article were true, and that within ten days after the service of the notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper in which the article appeared, and in as conspicuous a place and type as was the original article, then the plaintiff in such case, if a civil action, shall recover only actual damages, and if, in a criminal proceeding, a verdict of "guilty" is rendered on such a state of facts, the defendant shall be fined a penny and the costs, and no more.

(c) Subsections (a) and (b) of this section shall not apply to anonymous communications and publications.

§3919. Repealed. 52 Del.Laws, Ch. 214, eff. Jan. 21, 1960.

Section related to notice required in libel actions and effect of publication in good faith and retraction.

Passage Over Governor's Veto. 52 Del.Laws, Ch. 214, which repealed this section, became a law on Jan. 21, 1960, without the approval of the Governor and in accordance with Art. 3, §18 of Delaware Constitution.

Florida

Fla. Stat. §770.02. Correction, apology, or retraction by newspaper.—If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case shall recover only actual damages.

Fla. Stat. §836.07. Notice condition precedent to prosecution for libel.—Before any criminal action is brought for publication, in a newspaper periodical, of a libel, the prosecutor shall at least five days before instituting such action serve notice in writing on defendant, specifying the article and the statements therein which he alleges to be false and defamatory.

Fla. Stat. §836.08. Correction, apology, or retraction by newspaper.—If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within ten days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then any criminal proceeding

charging libel based on an article so retracted, shall be discontinued and barred.

Fla. Stat. §836.11. Publications which tend to expose persons to hatred, contempt or ridicule prohibited.—

(1) It shall be unlawful to print, publish, distribute or cause to be printed, published or distributed by any means, or in any manner whatsoever, any publication, handbill, dodger, circular, booklet, pamphlet, leaflet, card, sticker, periodical, literature, paper or other printed material which tends to expose any individual or any religious group to hatred, contempt, ridicule or obloquy unless the following is clearly printed or written thereon:

(a) The true name and post-office address of the person, firm, partnership, corporation or organization causing the same to be printed, published or distributed; and,

(b) If such name is that of a firm, corporation or organization, the name and post-office address of the individual acting in its behalf in causing such printing, publication or distribution.

(2) Any person, firm or corporation violating any of the sections of this statute shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

Georgia

Ga. Stat. §105-720. Evidentiary value of request for retraction or failure to make request; effect of retraction

upon punitive damages; pleading retraction.— In any civil action for libel, charging the publication of an erroneous statement alleged to be libelous, it shall be relevant and competent evidence for either party to prove that the plaintiff requested retraction or omitted to request retraction. The defendant may allege and give proof that the matter alleged to have been published and to be libelous was published without malice, and that the defendant in a regular issue of the newspaper or other publication did, within three days after receiving written demand (or in the next regular issue of the newspaper or other publication if the next regular issue be not published within three days after receiving such demand; correct and retract the allegedly libelous statement in as conspicuous and public a manner as that in which the alleged libelous statement was published, and that if the plaintiff so requested, such retraction and correction was accompanied by an editorial appearing in the same issue as the retraction in which the allegedly libelous statement was specifically repudiated, or that no request for correction and retraction was made by the plaintiff. Upon proof of such facts, the plaintiff shall not be entitled to any punitive damages, and the defendant shall be liable only to pay actual damages. The defendant may plead the publication of the correction, retraction or explanation (including the editorial, if demanded) in mitigation of damages. (Acts 1958, p. 54; 1960, pp. 198, 199.)

Indiana

Ind. Stat. §2-1043 [398]. Libel in newspaper.— Action and notice by aggrieved party — Good faith and retraction — Actual damages — Candidate for public office.— Before any suit shall be brought for the publication of a

libel in any newspaper in this state, the aggrieved party shall, at least three [3] days before filing the complaint in such suit, serve notice in writing on the published or publishers of such newspaper, at their principal office of publication, specifying the statements in said article which he or they allege to be false and defamatory. If it shall appear upon trial of said action that said article was published in good faith, that its falsity was due to mistake or misapprehension of the facts, and that a full and fair retraction of any statement therein alleged to be erroneous was published in a regular issue of such newspaper within three [3] days, if such newspaper be a daily publication, or within ten [10] days, if such newspaper be a weekly publication, after such mistake or misapprehension was brought to the knowledge of such publisher or publishers, in as conspicuous place and type in the same place where said original item appeared in such newspaper as was the article complained of, then the plaintiff in such case shall recover only actual damage. Provided, however, that the foregoing provisions of section one of this act shall not apply to the case of any libel against any candidate for a public office in this state, unless the retraction of the charge is made in a conspicuous manner at least three [3] days before the election. [Acts 1895, ch. 45, §1, p. 91.]

Iowa

Iowa Stat. §659.2. Libel — retraction — actual damages.— In any action for damages for the publication of a libel in a newspaper, if the defendant can show that such libelous matter was published through misinformation or mistake, the plaintiff shall recover no more than actual damages, unless a retraction be demanded and refused as hereinafter provided. Plaintiff shall serve upon the pub-

lisher at the principal place of publication a notice specifying the statements claimed to be libelous, and requesting that the same be withdrawn.

Iowa Stat. §659.4. Candidate for office—retraction—time.— If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election; provided that this and sections 659.2 and 659.3 shall not apply to any libel imputing unchastity to a woman.

Kentucky

Ky. Stat. §411.050 [2438b-1] Action for libel; retraction of statement; effect.— In any civil action for libel, charging the publication of an erroneous statement alleged to be libelous, it shall be relevant and competent evidence for either party to prove that the plaintiff requested retraction or omitted to request retraction. The defendant may allege and give proof that the matter alleged to have been published and to be libelous was published without malice, and that the defendant in the next regular issue of the newspaper or publication, after receiving demand in writing or within seven days if no such demand was made, did correct and retract the statement, or in the next regular issue of the newspaper or publication did publish a sufficient correction, retraction or explanation as conspicuously and publicly as that in which the alleged libelous statement was published, in the same type and in the same place in at least two successive issues of the same periodical publication, accompanied by editorials in which the allegedly libelous statement was specifically repudiated.

Upon proof of such facts the plaintiff shall not be entitled to punitive damages, and the defendant shall be liable only to pay actual damages. The defendant may plead the publication of the correction, retraction or explanation in mitigation of damages.

Maine

Me. Stat. T.14, §153. Mitigation of damages in action for libel.— The defendant in an action for libel may prove in mitigation of damages that the charge was made by mistake or through error or by inadvertence and that he has in writing, within a reasonable time after the publication of the charge, retracted the charge and denied its truth as publicly and as fully as he made the charge. He may prove in mitigation of damages that the plaintiff has already recovered or has brought action for damages for, or has received compensation for, substantially the same libel as that for which said action was brought. R.S. 1954, c. 113, §48; 1959, c. 317, §175.

Massachusetts

Mass. Stat. Ch. 231, §93. Retraction of libel; mitigation of damages; punitive damages.— Where the defendant in an action for libel, at any time after the publication of the libel hereinafter referred to, either before or after such action is brought, but before the answer is required to be filed therein, gives written notice to the plaintiff or to his attorney of his intention to publish a retraction of the libel, accompanied by a copy of the retraction which he intends to publish, and the retraction is published, he may prove such publication, and, if the plaintiff does not accept the offer of retraction, the defendant may prove

such non-acceptance in mitigation of damages. If within a reasonable time after receiving notice in writing from the plaintiff that he claims to be libelled the defendant makes such offer and publishes a reasonable retraction, and such offer is not accepted, he may prove that the alleged libel was published in good faith and without actual malice, and, unless the proof is successfully rebutted, the plaintiff shall recover only for any actual damage sustained. In no action of slander or libel shall exemplary or punitive damages be allowed, whether because of actual malice or want of good faith or for any other reason. Proof of actual malice shall not enhance the damages recoverable for injury to the plaintiff's reputation. As amended St. 1943, c. 360.

Michigan

Mich. Stat. §600.2911. Libel or slander.

. . . .

(2) Libel or slander; damages, actual, exemplary, retraction. (a) Except as provided in (b), in actions based on libel or slander the plaintiff is entitled to recover only for the actual damages which he has suffered in respect to his property, business, trade, profession, occupation, or feelings.

(b) Exemplary and punitive damages shall not be recovered in actions for libel unless the plaintiff, before instituting his action, gives notice to the defendant to publish a retraction and allows a reasonable time to do so, and proof of the publication or correction shall be admissible in evidence under a denial on the question of the good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages. The retraction shall be

published in the same size type, in the same editions and as far as practicable, in substantially the same position as the original libel.

Minnesota

Minn. Stat. §548.06. Damages for libel.— In an action for damages for the publication of a libel in a newspaper, the plaintiff shall recover no more than special damages, unless a retraction be demanded and refused as hereinafter provided. He shall serve upon the publisher at the principal place of publication, a notice, specifying the statements claimed to be libelous, and requesting that the same be withdrawn. If a retraction thereof be not published on the same page and in the same type and the statement headed in 18 point type or larger "RETRACTION", as were the statements complained of, in a regular issue thereof published within one week after such service, he may allege such notice, demand, and failure to retract in his complaint and recover both special and general damages, if his cause of action be maintained. If such retraction be so published, he may still recover general damages, unless the defendant shall show that the libelous publication was made in good faith and under a mistake as to the facts. If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published on the same page and in the same type and the statement headed in 18 point type or larger "RETRACTION," as were the statmeents complained of, in a regular issue thereof published within one week after such service and in a conspicuous place on the editorial page, nor if the libel was published within one week next before the election. This section shall not apply to any libel imputing unchastity to a woman.

Montana

Mont. Stat. §64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct —defense and mitigation of damages.—Before any civil action shall be commenced on account of any libelous or defamatory publication in any newspaper, magazine, periodical, radio or television station, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous or defamatory matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue of a newspaper, magazine or periodical published after the expiration of one week from the receipt of such notice shall be within a reasonable time for correction. In the case of radio and television stations, a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, which is made within seven (7) days following receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall constitute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, shall constitute a correction within the meaning of this section. If it shall appear upon trial that the publication was made under honest mistake or misapprehension, then a correction,

timely published, without comment, in a position and type as prominent as the alleged libel, or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

Nebraska

Neb. Stat. §25-840.01. Libel; damages; retraction; effect. (1) In an action for damages for the publication of a libel by any medium, the plaintiff shall recover no more than special damages, unless correction was requested, as herein provided, and was not published. Within twenty days after knowledge of the publication, plaintiff shall have given each defendant a notice by registered mail specifying the statements claimed to be libelous and specifically requesting correction. Publication of a correction shall be made within three weeks after receipt of the request. It shall be made in substantially as conspicuous a manner as the original publication about which complaint was made. A correction, published prior to receipt of a request therefor, shall have the same force and effect as if published after such request. The term special damages, as used in this section, shall include only such damages as plaintiff alleges and proves were suffered in respect to his property, business, trade, profession or occupation as the direct and proximate result of the defendant's publication.

(2) This section shall not apply if it is alleged and proved that the publication was prompted by actual mal-

ice, and actual malice shall not be inferred or presumed from the publication.

New Jersey

N. J. Stat. §2:59-2. Damages recoverable.—The defendant, in an action for libel against the owner, manager, editor, publisher or reporter of any newspaper, magazine, periodical, serial or other publication in this state, may give proof of intention, and plaintiff, unless he shall prove either malice in fact or that defendant, after having been requested by plaintiff in writing to retract the libelous charge in as public a manner as that in which it was made, failed to do so within a reasonable time, shall recover only his actual damage proved and specially alleged in the complaint.

North Carolina

N. C. Stat. §99-2. Effect of publication or broadcast in good faith and retraction.—(a) If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within 10 days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then the plaintiff in such case, if a civil action, shall recover only actual damages, and if, in a criminal proceeding, a verdict of "guilty" is rendered on such a state of facts, the defendant shall be fined a penny and the costs, and no more.

(b) If it appears upon the trial that such words or acts were conveyed and broadcast in good faith, that their falsity was due to an honest mistake of the facts, or without prior knowledge or approval of such station, and if with prior knowledge or approval that there were reasonable grounds for believing that the words or acts were true, and that within 10 days after the service of said notice a full and fair correction, apology and retraction was conveyed or broadcast by or over such radio or television station at approximately the same time of day and by the same sending power so as to be as visible and audible as the original acts or words complained of, then the plaintiff in such case, if a civil action, shall recover only actual damages, and if, in a criminal proceeding, a verdict of "guilty" is rendered on such state of facts, the defendant shall be fined a penny and costs, and no more. (1901, c. 557; Rev., s. 2013; C.S., s. 2430; 1943, c. 238, s. 2.)

North Dakota

N. D. Stat. §14-02-08. Libel suits against newspapers —Retraction.—Before any suit for libel can be brought against a newspaper, other than for the libel of or concerning a female, the party aggrieved, at least three days before filing his complaint, must serve notice on the publisher of such newspaper at the principal office of its publication, specifying the statement alleged to be false and defamatory. If on the trial it appears that the article was published in good faith, and its falsity was due to a misapprehension in regard to the facts, and a full and fair retraction of the erroneous statement was published in the next issue of the paper, or in the case of a daily paper, within three days after the mistake was brought to the attention of the publisher, in as conspicuous a place

and type as the original article, the plaintiff will be entitled to recover only such damages as he can show he has sustained to his property, business, trade, profession, or occupation. If the libel is against a candidate for office, the retraction also must be made editorially, and in the case of a daily paper, at least three days before the election, and in the case of a weekly paper, at least ten days before the election.

Ohio

Ohio Stat. §2739.14. Publishing corrected statements. (GC §6319-4) — Whenever demand has been made for the publication of statements or articles under section 2739.13 of the Revised Code, the newspaper company shall print and circulate the same in the next regular issue or within forty-eight hours following the receipt of such statement or article. Such statement or article shall be phrased in proper language and be printed without any additions to, or omissions therefrom, in the same color of ink, from like type, with headlines of equal prominence, occupying a like space in the same portion of the newspaper as was used in printing the original article complained of, and shall be given the same publicity in all respects and, as nearly as possible, the same circulation as such original article. Such company shall print and publish such statements or articles without cost to such persons or their representatives; and such publication may be proved at the trial of a suit for damages as a mitigating circumstance to reduce damages, provided that any voluntary publication made without demand may be used to rebut any presumption of malice or injury on the part of such company growing out of the original publication to which the same related. This section does not prevent the injured party

from alleging and proving actual malice on the part of the publisher and any special damages resulting to him therefrom.

Oklahoma

Okla. Stat. Ch. 25, §1446a. Good faith in publishing libel — Retraction — Actual damages only — Jury question — Exceptions. — In an action for damages for the publication of a libel in a newspaper or periodical, if the evidence shows that the article was published in good faith and that its falsity was due to an honest mistake of the facts, and the question of "honest mistake" shall be a question of fact to be determined by a jury, unless a jury be waived by the parties, the plaintiff shall be entitled to recover actual damages only unless a retraction be requested and refused as hereinafter provided. The person claiming to have been libeled shall notify the publisher, either orally or in writing, stating or setting forth the particular matter claimed to be libelous and requesting that the same be retracted. If a retraction, headed "RETRACTION" in eighteen point type or larger, be published on the same page and in the same type as were the statements complained of, in two regular issues of said newspaper or periodical, published within a reasonable time, but not to exceed two weeks after such notice in a weekly newspaper, or not to exceed one week in a daily newspaper, the publication of said retraction shall be full and complete satisfaction as to all other than actual damages, and the plaintiff shall not be entitled to recover other than actual damages on account of such erroneous published matter. If such a retraction be not so published, plaintiff may recover such damages as are provided by the statutes of this State, if his cause of action be maintained. This Section shall not apply to any

libel imputing unchastity to a woman; nor in any case in which the evidence shows the publication was made maliciously or with a premeditated intention and purpose to injure, defame or destroy the reputation of another or to injuriously alter a person's reputation; nor to anonymous communications or publications, and provided further that this Section shall not apply to any article pertaining to any candidate for any public office when said article is published within three weeks of the date of the primary, run-off primary, special or general election, as the case may be. Laws 1941, p. 37, §1.

Oregon

Ore. Stat. §30.165. Publication of correction or retraction upon demand.

(1) The demand for correction or retraction shall be in writing, signed by the defamed person or his attorney and be delivered to the publisher of the defamatory statement, either personally or by registered mail at the publisher's place of business or residence within 20 days after the defamed person receives actual knowledge of the defamatory statement. The demand shall specify which statements are false and defamatory and request that they be corrected or retracted. The demand may also refer to the sources from which the true facts may be ascertained with accuracy.

(2) The publisher of the defamatory statement shall have not more than two weeks after receipt of the demand for correction or retraction in which to investigate the demand; and, after making such investigation, he shall publish the correction or retraction in:

(a) The first issue thereafter published, in the case of newspapers, magazines or other printed periodicals.

(b) The first broadcast or telecast thereafter made, in the case of radio or television stations.

(c) The first public exhibition thereafter made, in the case of motion picture theatres.

(3) The correction or retraction shall consist of a statement by the publisher substantially to the effect that the defamatory statements previously made are not factually supported and that the publisher regrets the original publication thereof.

(4) The correction or retraction shall be published in substantially as conspicuous a manner as the defamatory statement. [1955 c. 365, §3]

South Dakota

S. D. Stat. §20-11-7. Retraction notice to newspaper — Punitive damages avoided by retraction — Candidates for office. — Before any action for libel can be brought against a newspaper or the publisher, editor, or manager thereof, other than a libel of or concerning a female, the party aggrieved must at least three days before the commencement of such action serve a notice on the person or persons against whom said action is to be brought specifying particularly the statement or statements claimed to be false and defamatory, and if on the trial it appears that such statement or statements were written or published in good faith and with the belief founded upon reasonable grounds that the same were true, and a full and fair retraction of

the erroneous matter correcting any and all misstatements of fact therein contained was published in the next issue of the paper, or in the case of a daily paper within three days after the mistake was brought to the attention of the publisher, editor, or manager in as conspicuous type as the original statement and the same position in the paper, the plaintiff will be entitled to recover no punitive damages. But if the libel is against a candidate for office the retraction must also be made editorially in the case of a daily paper at least three days and in the case of a weekly paper at least ten days before the election.

Texas

Tex. Stat. T. 88, Art. 5431 [5596]. Mitigation of damages. — In any action for libel, in determining the extent and source of actual damage and in mitigation of exemplary or punitive damage, the defendant may give in evidence, if specially pleaded, all material facts and circumstances surrounding such claim of damage and the defense thereto, and also all facts and circumstances under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of, and may also give in evidence, if specially pleaded in mitigation of exemplary or punitive damage, the intention with which the libelous publication was made. The truth of the statement, or statements, in such publication shall be a defense to such action. Acts 1901, p. 30; Acts 1927, 40th Leg., p. 121, ch. 80, §1.

Utah

Utah Stat. §45-2-1. Retraction by newspapers — Limit of Recovery. — If it shall appear on the trial of any action brought for the publication of any alleged libel in any newspaper published in this state that the alleged libel was published in good faith, that the publication thereof was due to mistake or misapprehension of the facts, and that a full and fair retraction of any statement therein alleged to be erroneous was published in the same type and in the same position on the same page as was the article complained of as libelous, in the next regular issue of such newspaper, or in case of a daily paper within three days, after service upon the publisher of such newspaper, at the principal office of its publication by the party aggrieved, of a written notice specifying the statement alleged to be erroneous, or, in case such notice is not served in the issue or within the time above specified after the filing of the complaint and service of the summons in said action, then the plaintiff shall recover only actual damages; provided, that if such libel was published in a Sunday edition, the publication of the retraction must have been in a Sunday edition within two weeks after the times above specified; provided, further, that this section shall not apply in the case of any libel against any candidate for a public office at any election or primary, or any avowed candidate for nomination to any office before any political convention, unless the retraction of the charge was made editorially in a conspicuous manner at least five days before the holding of such election, primary or political convention in case such libelous article was published in a daily paper, or if published in a weekly paper, at least three days before the holding thereof, which editorial retraction shall be in lieu of any other retraction herein provided for.

Virginia

Va. Stat. §8-632. Mitigation in actions against newspapers, etc. — In any civil action against the publisher, owner, editor, reporter or employee of any newspaper, magazine or periodical under §8-630, or for libel or defamation, because of any article, statement or other matter contained in any such newspaper, magazine or periodical, the defendant, whether punitive damages be sought or not, may introduce in evidence in mitigation of general and punitive damages, or either, but not of actual pecuniary damages, all the circumstances of the publication, including the source of the information, its character as affording reasonable ground of reliance, any prior publication elsewhere of similar purport, the lack of negligence or malice on the part of the defendant, the good faith of the defendant in such publication, or that apology or retraction, if any, was made with reasonable promptness and fairness; provided that the defendant may introduce in evidence only such circumstances and to the extent set forth in his or its grounds of defense. (1934, p. 495; Michie Code 1942, §6240a; 1954, c. 333.)

West Virginia

W. Va. Stat. §57-2-4. Justification and mitigation of damages in action for defamation. — In any action for defamation, the defendant may justify by alleging and proving that the words spoken or written were true, and after notice in writing of his intention to do so (given to the plaintiff at the time of, or for, pleading to such action) may give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon after-

wards as he had an opportunity of doing so, in case action shall have been commenced before there was an opportunity of making or offering such apology. (Code 1849, c. 176, §44; Code 1860, c. 176, §45; Code 1868, c. 130, §47; 1882, c. 160, §47; Code 1923, c. 130, §47.)

Wisconsin

Wis. Stat. §895.05. Damages in actions for libel.

(1) The proprietor, publisher, editor, writer or reporter upon any newspaper published in this state shall not be liable in any civil action for libel for the publication in such newspaper of a true and fair report of any judicial, legislative or other public official proceeding authorized by law or of any public statement, speech, argument or debate in the course of such proceeding. This section shall not be construed to exempt any such proprietor, publisher, editor, writer or reporter from liability for any libelous matter contained in any headline or headings to any such report, or to libelous remarks or comments added or interpolated in any such report or made and published concerning the same, which remarks or comments were not uttered by the person libeled or spoken concerning him in the course of such proceeding by some other person.

(2) Before any civil action shall be commenced on account of any libelous publication in any newspaper, magazine or periodical, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of

what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue published after the expiration of one week from the receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall constitute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, shall constitute a correction within the meaning of this section. A correction, timely published, without comment, in a position and type as prominent as the alleged libel, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

TABLE IX

STATUTORY REGULATION OF PUBLICATION OF INFORMATION WITH SEXUAL CONNOTATIONS

Alabama

Ala. Stat. T. 22 §274. (4379). Advertisements concerning impotency, prostatic troubles, etc. — Any person who shall, directly or indirectly, publish, deliver, distribute, or cause to be published, delivered, or distributed in any manner, whatsoever, any advertisement concerning lost manhood, lost vitality, impotency, sexual weakness, seminal

emissions, stricture, drains, discharges, prostatic troubles, self-abuse or excessive sexual indulgences or calling attention to any medicine, article or preparation that may be used therefor, or to any person or persons from whom, or any office or place at which, information, treatment or advice relating to such diseases, infirmity, habit, or condition may be obtained, shall be guilty of a misdemeanor, and upon coviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. This section shall not apply to the advertising of any patent medicine not used or recommended for the treatment of venereal diseases, nor shall it apply to didactic or scientific treatises which do not advertise or call attention to any person or persons from whom, or any place at which information, treatment or advice may be obtained, nor shall it apply to advertisements or notices issued by legally constituted health authorities in the discharge of their official duties. (1919, p. 909.)

Arizona

Ariz. Stat. §13-213. Advertising to produce abortion or prevent conception; punishment. — A person who wilfully writes, composes or publishes a notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for prevention of conception, or who offers his services by a notice, advertisement or otherwise, to assist in the accomplishement of any such purposes, is guilty of a misdemeanor.

California

Cal. Stat. Div. 2, Ch. 1, Art. 5, §600. Advertisements concerning venereal diseases, etc.: Punishment. — It is

unlawful for any person, firm, corporation or association, except boards of health or agencies approved by the State Department of Public Health, to post or otherwise exhibit or distribute in any manner whatsoever in any place, any advertising or other printed matter concerning venereal diseases, lost manhood, lost vitality, impotency, seminal emissions, self-abuse, varicocele, or excessive sexual indulgence and calling attention to any medicine, device, compound, treatment or preparation that may be used therefor.

Any person violating the provisions of this section shall upon conviction therefor be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment.

Cal. Stat. Div. 2, Ch. 1, Art. 5, §601. Advertising medicine or offering services to produce miscarriage or abortion: Felony. — Every person who wilfully writes, composes or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony and shall be punished as provided in the Penal Code.

Colorado

Colo. Stat. 40-9-26. Advertising cures for sexual disease.—It shall be unlawful for any person, association, society, partnership or corporation to circulate, disseminate, spread, print, publish, or cause the circulation, dissemination, spreading, printing or publication of any pub-

lic advertisement, announcement, publication, notice or information of the treatment, alleviation, palliation, cure or prevention of any sexual or menstrual disease, weakness or condition; or to display, or expose to the public view, on any public street, alley or road, any instrument, device or thing designed or intended or sold for the treatment, cure, alleviation, palliation or prevention of any sexual or menstrual disease, weakness or condition. But this section and section 40-9-27 shall not prevent such publication and dissemination of any such advertisement in exclusively medical publications and publications designed and circulated among dealers as trade journals, not for public inspection.

Connecticut

Conn. Stat. Ch. 939, § 53-31. Encouraging the commission of abortion.—Any person who, by publication, lecture or otherwise or by advertisement or by the sale or circulation of any publication, encourages or prompts to the commission of the offenses described in section 53-29 or 53-30, or who sells or advertises medicines or instruments or other devices for the commission of any of said offenses except to a licensed physician or to a hospital approved by the state department of health, or who advertises any so-called monthly regulator for women, shall be fined not more than five hundred dollars or imprisoned not more than one year or both. (1949 Rev., § 8365.)

Delaware

Del. Stat. T. 11, § 302. Advertising means of procuring abortion.—Whoever advertises, prints, publishes,

distributes or circulates any pamphlet, printed paper, book, newspaper, notice, advertisement, or reference, containing words or language giving or conveying any notice, hint or reference to any person, or to the real or fictitious name of any person from whom, or to any place, house, shop, or office where anything whatsoever, or any instrument or means whatsoever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any pregnant woman, shall be fined not less than $50 nor more than $200, and imprisoned not more than 1 year.

Del. Stat. T. 16, § 2502. Displaying or advertising sale of contraceptives.—No person shall exhibit, display or expose for sale any appliance, drug or medicinal preparation intended or having special utility for the prevention of conception or venereal disease, or exhibit, display or expose any container, or package therefor descriptive or suggestive of the contents, or advertise the sale of the same by any placards, billboards, handbills, newspapers, periodicals, signs, or by any means of publication either visual or auditory, and either individually or by broadcast.

Florida

Fla. Stat. § 797.02. Advertising drugs, etc., for abortion.—Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or the name of any person, real or fictitious, from

whom, or to any place, house, shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Amended by Laws 1971, c. 71-136, § 771, eff. Jan. 1, 1972.

Fla. Stat. §742.09 (Bastardy). Publishing names; penalty.—It shall be unlawful for the owner, publisher, manager or operator of any newspaper, magazine, radio station or other publication of any kind whatsoever, or any other person responsible therefor, or any radio broadcaster, to publish the name of any of the parties to any court proceeding instituted or prosecuted under this act; and any person violating this provision shall be guilty of a misdemeanor and be punished by imprisonment in the county jail not exceeding twelve months or by fine not exceeding one thousand dollars or both.

Fla. Stat. 836.02. Must give name of the party written about.—No person shall print, write, publish, circulate or distribute within this state any newspaper, magazine, periodical, pamphlet or other publication of any character, either written or printed, wherein the alleged immoral acts of any person are stated or pretended to be stated, or wherein it is intimated that any person has been guilty of any immorality, unless such written or printed publication shall in such article publish in full the true name of the person intended to be charged with the commission of such acts of immorality.

Any person convicted of any violation of this section shall be punished by a fine not to exceed five hundred dollars, or by imprisonment not to exceed one year. Any person who shall aid in any way in the writing or printing of any literature in violation of this section shall be punished in the same manner as the principal might be punished upon conviction; provided, nothing in this section shall apply to mechanical employees in printing offices, or to newsboys.

Fla. Stat. 794.03. Unlawful to publish name of female raped, etc.—No person shall print and publish or cause to be printed and published in any newspaper, magazine, periodical or any other publication in the State the name or identity of any female raped or upon whom an assault with intent to commit rape has been committed or may be committed.

Idaho

Idaho Stat. 18-603. Advertising medicines or other means for preventing conception, or facilitating miscarriage or abortion.—Every person who wilfully publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise to assist in the accomplishment of any such purpose, is guilty of a felony. (R. S., R. C., & C. L., § 6843; C. S., § 8306; I. C. A., § 17-2103.)

Maine

Me. Stat. T. 17, § 2902. Notices for cure of venereal diseases.—It shall be unlawful for any person to publish

or cause to be published, to deliver or distribute or cause to be delivered or distributed, in any manner whatsoever, or to post or display, or to permit to be posted, displayed or to remain on any buildings, windows or outhouses, or premises or other surface owned or controlled by him in this State, or to have displayed in or on any window or place where the same could be read by passers-by or the public, any advertisement, label, statement, print or writing which refers to any person or persons from whom or to any means by which, or to any office or place at which may be obtained any treatment or cure for syphilis, gonorrhea, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet varicocele or self-abuse whether described by such names, words, terms or phrases, or by any other names, words, terms or phrases calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions, or habits mentioned in this section. . . .

Any person violating any of the provisions of this section shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 months, or by both.

Maryland

Md. Stat. Art. 27, § 322. Advertising cures.—No person or persons, firm, company or corporation, shall advertise or permit to be advertised, or in any manner whatsoever call public attention to, any drug, medicine, preparation or substance for the treatment, alleviation or cure of gonorrhea, syphilis, chancroid or any other venereal disease or of any diseased condition of the human genitalia caused by, related to, or resulting from the afore-

said venereal diseases, or to any person from whom, or to any place at which, such drug, medicine, preparation or substance may be obtained, except that the provisions of this section shall not apply to any health department or other governmental agency, or to any health or medical agency approved under this section by the State Board of Health, or to medical, pharmaceutical or other professional publications not subject to public sale or distribution, or to bona fide news items or bona fide articles, published in newspapers, magazines or books. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) for each such violation. (An. Code, 1951, § 386; 1943, ch. 724, § 366A.)

Massachusetts

Mass. Stat. 272, §21. Instruments or other articles for self-abuse, prevention of conception or abortion, in general.—Except as provided in section twenty-one A, whoever sells, lends, gives away, exhibits or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument, or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not

more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars.

Mass. Stat. 272, § 29. Statements relative to diseases or infirmities of sexual organs and places for information and treatment.—Whoever publishes, delivers, distributes, or causes to be published, delivered or distributed, an advertisement, statement or notice, other than a label which is attached to a bottle or package of medicine, or which is contained in a sealed package of medicine, describing the causes, symptoms, details or effects of a venereal disease, or of a disease, infirmity or condition of the sexual organs for the purpose of calling attention to or advertising a person from whom, or an office or place at which, information, treatment or advice may be obtained concerning such diseases or conditions, shall be punished by imprisonment for not more than six months or by a fine of not less than fifty nor more than five hundred dollars, or both. This Section shall not apply to the printing or delivering in sealed packages outside this commonwealth of books pamphlets or circulars containing such advertisements, nor to newspapers printed outside this commonwealth, nor to the printing, publishing or distribution of any matter pertaining to venereal diseases by state or municipal health authorities.

Michigan

Mich. Stat. 750.15. Abortion, drugs or medicine, advertising or sale to procure.—Selling drugs, etc., to produce abortion.—Any person who shall in any manner, except as hereinafter provided, advertise, publish, sell or publicly expose for sale any pills, powder, drugs or combination of drugs, designed expressly for the use of fe-

males for the purpose of procuring an abortion, shall be guilty of a misdemeanor.

Any drug or medicine known to be designed and expressly prepared for producing an abortion, shall only be sold upon the written prescription of an established practicing physician of the city, village, or township in which the sale is made; and the druggist or dealer selling the same shall, in a book for that purpose, register the name of the purchaser, the date of the sale, the kind and quantity of the medicine sold, and the name and residence of the physician prescribing the same.

Mich. Stat. 750.40. Private diseases, conceptive preventatives; publication cures. Publication in indecent language of cures for private diseases and conceptive preventatives. The publication or sale within this state of any circular, pamphlet or book containing recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception, or tending to produce miscarriage or abortion is hereby prohibited; and for each copy thereof, so published and sold, containing such prohibited recipes or prescriptions, the publisher and seller shall each be guilty of a misdemeanor.

Montana

Mont. Stat. 94-3609. (11142) Advertising to produce miscarriage. Every person who willfully writes, composes or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or, for the prevention of conception, or who of-

fers his services by any notice, advertisement or otherwise, to assist in the accomplishment of such purpose is guilty of a misdemeanor.

Mont. Stat. 94-3611. (11144) Prohibition against a certain class of advertisements. No newspaper or other paper published or circulated in whole or in part within the state of Montana shall contain advertisements of cures, appliances, or treatments for certain diseases or disorders, to wit: stricture, syphilis, impotency, gonorrhea, emissions, and so-called "lost manhood", and other private diseases of men and women, and their complications.

Mont. Stat. 94-3617. (11148.2) Contraceptives and prophylactics, advertising of, forbidden. It shall be unlawful to exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist, or to advertise such in any magazine, newspaper or other form of publication, originating in, or published within the state of Montana; to publish, or distribute from house to house or upon the streets, any circular, booklet or other form of advertising, or by other visual means, or by auditory method or by radio broadcast; or by the use of outside signs on stores, billboards, window displays or other advertising visible to persons upon the streets or public highways; provided, however, that nothing in this act shall prevent the advertising of prophylactics or contraceptives in the trade press of those magazines whose principal circulation is to the medical and pharmaceutical professions; or to those magazines and other publications having interstate circulation, originating outside of the state of Montana where the adver-

tising does not violate any United States law or federal postal regulation; nor to the furnishing within the store or place of business of a licensed pharmacist, to persons qualified to purchase, and then only upon their inquiry, such printed or other information as is requisite to proper use in relation to any merchandise coming within the provisions of this act.

Nebraska

Neb. Stat. 28-923. Venereal diseases; advertising cures; penalty.— Whoever prints or publishes or causes to be printed or published in any newspaper, periodical, circulars, posters, labels or pamphlets published or circulated in this state, any advertisement of medicine, drug, nostrum or apparatus for the cure of private or venereal diseases, or shall circulate or distribute any newspaper, periodical, circulars, posters, labels, or pamphlets containing such an advertisement or notice mentioned in this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or by both.

Nevada

Nev. Stat. 441.290. Unlawful acts; penalties.—

2. Any person causing the name of any person against whom any mandamus proceeding or criminal prosecution is instituted, as provided for by this chapter, to appear in any newspaper or magazine without the consent of such person, or any person who reveals the

name of any such person except as authorized by this chapter, or as such person shall consent, is guilty of a misdemeanor.

(Part 13:179:1937; 1931 NCL § 5317.23) + (Part 15:179:1937; 1931 NCL § 5317.25) — (NRS A 1967, 578).

Nev. Stat. 202.200. Advertising goods and services to produce miscarriage.—

1. It shall be unlawful for any person:

(a) To advertise or publish, or cause to be advertised or published in a newspaper, pamphlet, handbill, book or otherwise, any medicine, nostrum, drug, substance, instrument or device to produce the miscarriage or premature delivery of a woman pregnant with child, or which purports to be, or is represented to be, productive of such miscarriage or premature delivery; or

(b) To advertise in any manner his or her services, aid, assistance or advice, or the services, assistance or advice of any other person, in the procurement of such miscarriage or premature delivery.

Nev. Stat. 202.220. Circulation of publications containing prohibited matter forbidden. — Every person who shall knowingly sell, distribute, give away, or in any manner dispose of or exhibit to another person any newspaper, pamphlet, book, periodical, handbill, printed slip or writing, or cause the same to be so sold, distributed, disposed of, or exhibited, containing any advertisement prohibited in NRS 202.200, or containing any description or notice of,

or reference to, or information concerning, or direction how or where to procure any medicine, drug, nostrum, substance, device, instrument or service, the advertisement of which is prohibited or declared to be unlawful, shall be guilty of a misdemeanor. (Part 1911 C&P §190; RL §6455; NCL §10137) — NRS A 1967, 484).

Nev. Stat. 202.240. Advertising treatment, cures, prevention of sexual disorders. —

1. "Persons" as used in this section means natural persons, copartnerships, corporations and association, and shall include persons of both sexes.

2. It shall be unlawful for any person to publish or cause to be published, to deliver or distribute or cause to be delivered or distributed in any manner whatsoever, or to post, or display, or knowingly to permit to be posted, displayed, or to remain on any buildings, windows or outhouses, or premises or other surface owned or controlled by him in the State of Nevada, or to manufacture or sell, or knowingly to have displayed in or on any window or place where the same could be read by passers-by or the public, any advertisement, label, statement, print or writing which refers to any person or persons from whom, or to any means by which, or to any office or place at which may be obtained any treatment or cure of syphilis, gonorrhea, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele or self-abuse, whether described by such names, words, terms or phrases, or by any other names, words, terms or phrases, calculated or intended to convey to the reader the idea that any of the diseases, infirmities, disabilities, conditions or habits are meant or referred to, or which refers to any

medicine, article, device or preparation that may be used for the treatment, cure or prevention of any of the diseases, infirmities, disabilities, conditions or habits mentioned in this section.

3. Any person violating any of the provisions of this section is guilty of a misdemeanor.

4. This section shall not apply to publications, advertisements or notices of the United States Government, the State of Nevada or of any city or town or other political subdivision of the State of Nevada. (1:221:1921; NCL §10531) + (2:221:1921; NCL §10532) + (3:221:1921; NCL §10533) + (4:221:1921; NCL §10534) — (NRS A 1967, 484).

New Jersey

N. J. Stat. 2A:170-76. Uttering or exposing to view instruments, medicines, etc., to prevent conception or procure abortion. — Any person who, without just cause, utters or exposes to the view of another, or possesses with intent to utter or expose to the view of another, or to sell the same, any instrument, medicine or other thing, designed or purporting to be designed for the prevention of conception or the procuring of abortion, or who in any way advertises or aids in advertising the same, or in any manner, whether by recommendation for, or against its use or otherwise, gives or causes to be given, or aids in giving any information how or where any such instrument, medicine or other thing may be had, seen, bought or sold, is a disorderly person.

North Dakota

N. D. Stat. 23-12-06. Advertising certain cures and drugs and specialization prohibited — Penalty. — Any person who shall:

1. Advertise in his own name or in the name of another person, firm or pretended firm, association, or corporation or pretended corporation, in any newspaper, pamphlet, circular, or other written or printed paper, a claim or advertisement with regard to the treatment or curing of venereal diseases or the restoration of "lost manhood" or "lost vitality";

2. Permit any advertisement of the kind specified in subsection 1 to be printed, inserted, or published in any newspaper or periodical of which he is the owner, publisher, or manager;

3. Advertise in any manner that he is a specialist in diseases of the sexual organs, or in diseases caused by sexual weakness or self-abuse, or in any disease with like or similar causes;

4. Advertise in any manner any medicine, drug compound, appliance, or any means whatever, whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced;

5. Advertise in any manner any medicine or means whereby the monthly periods of women can be regulated or the menses re-established if suppressed; or

6. Publish, distribute, or cause to be published or distributed or circulated, any of the advertising matter mentioned in the preceding subsections of this section,

shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months.

Oregon

Ore. Stat. 435.110. Display of contraceptives prohibited; advertising regulations.—

1. No person shall display or expose for sale any of the articles described in ORS 435.010.

2. No person shall advertise the articles described in ORS 435.010 in a manner that is not discreet and tasteful. (Amended by 1969 c. 328 §6)

Ore. Stat. 434.250. Advertising and publishing of cures for certain diseases of urogenital organs prohibited.

1. No person shall advertise or publish any advertisement intended to imply or to be understood that he will restore manly vigor, treat or cure lost manhood, lost power, stricture, gonorrhea, chronic urethral discharges, gleet, varicocele or syphilis.

2. No person shall advertise any medicine, medicinal preparation, remedy or prescription for any of the ailments or diseases listed in subsection 1 of this section.

3. No owner or managing officer of any newspaper shall print or publish in his paper any advertisement of the type described in subsections 1 and 2 of this section.

Ore. Stat. 434.260. Advertising and distributing of cures for diseases of urogenital organs prohibited; approved agencies excepted. — No persons, except boards of health or agencies approved by the State Board of Health, shall publish, deliver or distribute, or cause to be published, delivered or distributed in any manner whatever, or permit placards or posters to be or remain on buildings or outhouses or premises controlled by him containing an advertisement concerning venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person from whom, or an office or place at which information, treatment or advice may be obtained.

Pennsylvania

Pa. Stat. T. 18, Ch. 1, §783. Selling or advertising medicines, etc., to produce abortion; giving, selling, or advertising obscene books, etc.; proceedings on complaint of offense. — A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this act, supported by oath or affirmation, must issue a warrant directed to the sheriff, or to any constable, marshal or police officer within the county directing him to search for, seize and take possession of any of the articles specified in this chapter in the possession of the person against whom complaint is made. The magistrate must

immediately transmit every article seized by virtue of the warrant to the district attorney of the county, who must, upon conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had. 1897, May 12, P.L. 63, §3.

Rhode Island

R. I. Stat. 11-3-4. Advertising or selling services or drugs to procure miscarriage. — Every person who knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where, any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatsoever, or any advice, direction, information or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child, or who knowingly exhibits, advertises or sells to be used for such purpose any poison, drug, mixture, preparation, medicine, noxious thing, instrument or means whatsoever, or who, with or without any charge therefor, gives to any person any advice, information, instruction or direction for the purpose of causing or assisting in any such miscarriage, shall be punished by imprisonment for not more than two (2) years, or by a fine of not more than one thousand dollars ($1,000), or by both.

South Carolina

S. C. Stat. Ch. 3, §16-81. Misdemeanor to publish name of person raped, etc. — Whoever publishes or causes to be published the name of any woman, maid or woman child upon whom the crime of rape or an assault with intent to ravish has been committed or alleged to have been committed in this State in any newspaper, magazine or other publication shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than three years. But the provisions of this section shall not apply to publications made by order of court. (1952 Code §16-81; 1942 Code §1275; 1932 Code §1275; Cr. C. '22 §170; Cr. C. '12 §317; 1909 (26) 208.)

Texas

Tex. Stat. T. 12, Ch. 1, Art. 702. Private disease posters. — Any person who shall publish, deliver or distribute, or cause to be published, delivered or distributed in any manner, or who shall permit placards or posters to be or remain on buildings, outhouses or premises controlled by him, containing an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness or emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person from whom or place at which information, treatment or condition may be obtained shall be fined not more than two hundred dollars. Acts 4th C.S. 1918, p. 195.

Utah

Utah Stat. 58-19-10. Advertising and display. — It shall be unlawful to show or display prophylactics in any show window facing a public street, highway or passageway, upon the streets or in any public place, or to advertise in any magazine, newspaper or other form of publication, originating in, or published within the state of Utah, to distribute from house to house or upon the streets, any circular, booklet or other form of advertising, or by visual means or auditory method or by radio broadcast; or by the use of outside signs on stores, billboards, window display or other advertising visible to persons upon the street or public highway.

Provided, however, that nothing in this act shall prevent the advertising of prophylactics in the trade press or those magazines whose principal circulation is to the medical and pharmaceutical professions; to those magazines and other publications having interstate circulation, originating outside the State of Utah where the advertising does not violate any United States law or federal postal regulation; nor to the furnishing within the store or place of business of a licensee, to persons qualified to purchase such printed or other information as is needed in relation to any prophylactics coming within the provisions of this act. History: L. 1937, ch. 97, §11; C. 1943, 79-12a-11.

Vermont

Vt. Stat. T. 13, Ch. 5, §104. Advertising or dealing in anything to cause miscarriage. — A person who knowingly causes to be made public by print, writing, words or language that give any information where anything, or any

advice or information, may be obtained for the purpose of causing or procuring the miscarriage of a pregnant woman, shall be imprisoned in the state prison not more than ten years nor less than one year and fined not more than $500.00 nor less than $200.00.

Vt. Stat. 305. Advertisements for cure of sexual disease, disabilities or habits. — A person shall not publish or cause to be published, deliver or distribute or cause to be delivered or distributed in any manner whatsoever, or post, display, or permit to be posted, displayed, or to remain on any building, windows, or out-houses, or premises, or other surface owned or controlled by him or to have displayed in or on any window or place where the same could be read by passers-by or the public, any advertisement, label, statement, print or writing which refers to any person from whom, or to any means by which, or to any office or place at which, may be obtained any treatment or cure for syphilis, gonorrhea, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele, or self-abuse, whether described by such names, words, terms or phrases, or by any other means, words, terms or phrases, calculated or intended to convey to the reader the idea that any of such diseases, infirmities, disabilities, conditions, or habits are meant or referred to, or which refers to any medicine, article, device or preparation that may be used for the treatment, cure or prevention of any of the diseases, infirmities, disabilities, conditions or habits mentioned in this section.

Source.V.S. 1947, §8583. P.L. §8717. 1921, No. 213, §1.

Virginia

Va. Stat. 32-103. Venereal disease, etc., advertisements. — It shall be unlawful for any person, firm, corporation or association, except boards of health or agencies approved by the State Board of Health, to post or otherwise exhibit or distribute in any manner whatsoever in any place any advertisement or other printed matter concerning venereal diseases, lost manhood, lost vitality, impotency, seminal emissions, self-abuse, varicocele or excessive sexual indulgence, and calling attention to any medicine or preparation that may be used therefor.

For each and every violation of this section the defendant upon conviction shall be fined not less than ten dollars nor more than one hundred dollars. (1918, p. 561; Michie Code 1942, §1554m.)

Washington

Wash. Stat. 9.04.030, Advertising cures of venereal diseases, lost vitality — Monthly regulators. — Every person who shall advertise, either in his own name, or in the name of another person, copartnership or pretended copartnership, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, periodical or in any other written or printed paper, and every owner, publisher, editor or manager of any newspaper, pamphlet, circular, periodical or other written or printed paper, who shall publish, or permit to be published or inserted, an advertisement in any newspaper, pamphlet, circular, periodical, or other written or printed paper, owned or controlled by him, or of which he is the editor or manager, and every person who shall distribute, circulate, display or cause to

be distributed, circulated or displayed, any newspaper, pamphlet, circular, periodical, or other written or printed paper containing any advertisement for the treatment or care of venereal diseases, the restoration of lost manhood, or of lost vitality or lost vigor, or monthly regulators for women, or the treatment of diseases of the sexual organs, or diseases caused by sexual vice, self-abuse or any disease of like cause, or the sale of any medicine, drug, compound, mixture, appliance, or any means whatever, whereby sexual diseases of men or women may be cured or relieved, shall be guilty of a gross misdemeanor.

Wash. Stat. 9.68.020. Prohibited publications.— Every person who shall publish, and every proprietor, manager or editor who shall permit to be published, in any book, newspaper, magazine or other printed publication circulated wholly or in part in this state—

1. Any detailed account of the commission or attempted commission of the crime of rape, carnal knowledge, seduction, adultery, sodomy or any other sexual crime, or of the trial of any person charged therewith; or,

2. Any detailed account of the execution of any person convicted of crime; or,

3. Any detailed statement of any evidence of indecent, obscene or immoral acts offered in any trial or proceeding; or,

4. Any interview with, advertisement for, communication from or account of the actions of any public prostitute, except upon a matter concerning public welfare;

Shall be guilty of a misdemeanor.

West Virginia

W. Va. Stat. 16-4-25. Advertisements concerning venereal disease, etc.; penalty; exceptions.— Whosoever publishes, delivers or distributes or causes to be published, delivered or distributed in any manner whatsoever, in this State, any advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness, seminal emissions, varicocele, self-abuse or excessive sexual indulgence, and calling attention to a medicine, article or preparation that may be used therefor, or to a person or persons from whom, or an office or place at which, information, treatment or advice relating to such disease, infirmity, habit or condition may be obtained, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than three hundred dollars, or imprisonment in the county jail not to exceed six months, or both, in the discretion of the court.

Nothing in this section shall be construed as to prevent legitimate and legal public notices, placards, etc., issued under the direction of the state department of health or as to prevent sending out literature by either the state department of health or the United States public health service. (1919, c. 73, § § 1, 2, 3; Code 1923, c. 150, § 13.)

Wisconsin

Wis. Stat. T. 15, 143.075. Sexual and venereal diseases; advertising; treatment of; penalty.— Any person who shall advertise in any manner, either in his own name or under the name of another person, firm or pretended firm, association, corporation or pretended corpo-

ration, in any newspaper, pamphlet, circular or other written or printed paper, the treatment and curing of venereal diseases, the restoration of "lost manhood" or who shall advertise in any manner that he is a specialist in diseases of the sexual organs or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence or in any diseases of a like nature or produced by like causes, or who shall advertise in any manner any medicine, drug, compound or any means whatever whereby sexual and venereal diseases of men and women may be cured or relieved or abortion or miscarriage produced, and the owner, publisher or manager of any newspaper who shall publish any such advertisement or permit or allow any such advertisement to be inserted and published in any newspaper owned or controlled by him or in which he has an interest, and any person, firm or corporation who shall sell, offer for sale, keep for sale, give away or otherwise dispose of any newspaper, pamphlet, circular, or other written or printed paper containing any such advertisement, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 nor more than $100.

Wis. Stat. T. 45, 942.02. Communication of identity of victim of offensive crime.—

1. Whoever does either of the following may be fined not more than $500 or imprisoned not more than one year in county jail or both:

(a) Intentionally publishes in any radio or television broadcast, newspaper, magazine, or other similar method of disseminating news to the public, the identity of any living person as a victim or the identity of any living per-

son who is the victim of the crime of rape, sexual intercourse without consent, sexual intercourse with a child, sexual perversion, or indecent behavior with a child, which crime is alleged to have occurred in this state; or

(b) With intent that it be so published in this or another state, communicates to another the identity of such person.

2. This section does not apply to publications or communications necessary in the official investigation, institution, prosecution, or defense of any civil or criminal court proceeding or in the compilation of the records pertaining thereto.

Wyoming

Wyo. Stat. 6-105. Advertising drug or nostrum for procuring abortion or miscarriage.— Whoever prints or publishes any advertisement of any drug or nostrum with intent to obtain utilization of such drug or nostrum for procuring abortion or miscarriage; or sells or gives away, or keeps for sale or gratuitous distribution, any newspaper, circular, pamphlet, or book containing such advertisement, or any account or description, of such drug or nostrum with intent to obtain utilization of such drugs or nostrum to procure abortion or miscarriage, shall be fined not more than one hundred dollars, to which may be added imprisonment in the county jail for not more than six months. (Laws 1890, ch. 73, § 83; R. S. 1899, § 5063; C. S. 1910, § 5913; C. S. 1920, § 7202; R. S. 1931, § 32-520; C. S. 1945, § 9-515; Laws 1969, ch. 32, § 9.)

TABLE X

BOYCOTT STATUTES

Alabama

Ala. Stat. T. 14, Ch. 20, § 56. (3449). Printing or circulating notice of boycott forbidden.— Any person, firm, corporation or association of persons who prints, or circulates any notice of boycott, boycott cards, stickers, dodgers, or unfair lists, publishing or declaring that a boycott or ban exists or has existed or is contemplated against any person, firm, corporation, or association of persons doing a lawful business, shall be guilty of a misdemeanor. (1921, p. 31.)

Colorado

Colo. Stat. 80-11-12. Unlawful to publish notice of boycott.— It shall be unlawful to print or circulate any notice of boycott, boycott card, sticker, banner, sign or dodger, publishing or declaring that a boycott or ban exists, or has existed or is contemplated against any person, firm, or corporation doing a lawful business, or publish the name of any judicial officer or other public officer upon any notice of boycott, boycott card, sticker, banner, sign or other similar list, because of any lawful act or decision of such official.